Supreme Court, U.S.
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No.

In the Supreme Court of the United States

IN RE: GRAND JURY SUBPOENA NO. 2002R02810(163) ISSUED BY GRAND JURY NO. 2005-01 TO JOHN DOE,

Petitioner.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI
[Redacted Version]

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QUESTIONS PRESENTED ON CERTIORARI

1. Whether the Fifth Amendment's Self-Incrimination Clause bars the State from compelling a witness to produce any incriminating evidence against himself, whether testimonial or "purely physical."

2. Whether the Fifth Amendment's Self-Incrimination Clause bars the State from imposing on a witness the "cruel trilemma" of self-accusation, obstruction of justice, or contempt of court.

3. Whether the Fifth Amendment's Self-Incrimination Clause bars the State from compelling a handwriting exemplar when that exemplar discloses the contents of the witness's mind, as documented by the Applicant's "Brandeis brief" of overwhelming expert testimony and supporting scientific research, all of which went completely uncontested by the government in the district court and on appeal.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

John Doe; and the United States Attorney for the Middle District of Florida, Jacksonville Division.

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Eleventh Circuit is unpublished, but available on Westlaw at 2006 WL 988471. A copy of the Opinion is included in the Appendix at Appendix A at 1a-4a. The *In Camera* Order of the United States District Court for the Middle District of Florida is also unpublished. The Appendix includes both the District Court's February 15, 2006 Order (partially enforcing the grand jury subpoena), and the March 7, 2006 Order (finding the Petitioner in civil contempt), at Appendix B at 5a-50a and Appendix C at 51a-60a, respectively.

JURISDICTION

The United States Court of Appeals for the Eleventh Circuit issued its *Per Curiam* Opinion on April 13, 2006. This Petition for Writ of Certiorari is filed within 90 days of the Opinion affirming the District Court's Order. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amendment V

No person . . . shall be compelled in any criminal case to be a witness against himself . . .

* * * * *

28 U.S.C. § 1826(a)-(b)
(The Recalcitrant Witness Statute)

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refuses without just cause shown to comply with an order of the court to testify or provide other information, including any book, paper, document, record or other material, the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of -- (1) the court proceeding, or (2) the term of the grand jury, including extensions, -- before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months.

(b) No person confined pursuant to subsection (a) of this section shall be admitted to bail pending the determination of an appeal taken by him from the order for his confinement if it appears that the appeal is frivolous or taken for delay. Any appeal from an order of confinement under this section shall be disposed of as soon as practicable, but not later than thirty days from the filing of such appeal.

STATEMENT OF THE CASE

A grand jury sitting in the Middle District of Florida, Jacksonville Division, issued a subpoena that commanded Doe to perform a handwriting examination in December of 2005. (R. 13.)[1] Doe filed a motion to quash the subpoena on Fifth and Fourth Amendment grounds. (R. 13.) Doe asserted his Fifth Amendment privilege against self-incrimination on three grounds: first, that compelling him to produce any evidence against himself, testimonial or not, violated the Fifth Amendment's Self-Incrimination Clause, warranting reconsideration of prior precedent; second, that the subpoena compelled him into a "cruel trilemma" of self-accusation, obstruction, or contempt in contravention of the Fifth Amendment's Self-Incrimination Clause; and third, that handwriting is not a mere physical trait, but a conveyance of mental impressions, and thus protected by the Fifth Amendment's Self-Incrimination Clause. *See id.* Alternatively, Doe argued for the privacy interest in handwriting recognized by state law and several federal court decisions, again warranting reconsideration of prior precedent. *See id.*

On February 15, 2006, the district court partially quashed the grand jury subpoena and ordered Doe to comply with the redacted subpoena by March 1, 2006. (R. 18; App. B.) Doe did not comply with that order, on advice of counsel, in an effort to protect and vindicate the important Fifth Amendment rights at issue. (R. 29, 10:11.) The district court convened

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[1] Doe will cite to the district court record as (R. XX.) where the "XX" represents the document number. Citations to the appellate record will be to the name of the document filed in the appellate record.

a contempt hearing on March 6, 2006, and found Doe in civil contempt. (R. 29.) The district court granted Doe's motion for stay of the immediate order of confinement and imposed bail and other conditions pending appeal. (R. 29, 42:13-15; 64:21-24.)

Doe filed a timely Notice of Appeal with the Eleventh Circuit Court of Appeals on March 8, 2006. (R. 28.) The Eleventh Circuit ordered expedited briefing and disposition of the appeal (Order dated March 15, 2006), and on April 13, 2006 issued a *per curiam* order affirming the trial court's order of civil contempt. (Opinion filed April 13, 2006.)

The District Court had jurisdiction over the contempt proceeding against Doe pursuant to 28 U.S.C. § 1826 (the Recalcitrant Witness Statute), and 28 U.S.C. § 1331 because his challenge to the grand jury subpoena presented a federal question arising under the Fifth Amendment's Self-Incrimination Clause. The United States Court of Appeals for the Eleventh Circuit had jurisdiction over Doe's appeal under 28 U.S.C. § 1291.

ARGUMENT FOR GRANTING WRIT

This case raises three compelling issues. First, whether the Fifth Amendment's Self-Incrimination Clause bars the state from compelling witnesses to produce incriminating evidence against themselves in a criminal context, regardless of whether the evidence is "testimonial" or "purely physical." Second, whether the Fifth Amendment's Self-Incrimination Clause bars the state from imposing on a witness the "cruel trilemma" of self-incrimination, obstruction, or contempt of court. Third, and finally, whether the Fifth Amendment's Self-Incrimination Clause bars the state from compelling a person to produce a handwriting exemplar, when that

exemplar goes far beyond any purely physical trait and discloses testimonial mental thought processes.

The first issue goes directly to what it means to be a "witness" within the meaning of the Fifth Amendment's Self-Incrimination Clause. Justices Thomas and Scalia invited this Court to resolve that fundamental question in *United States v. Hubbell*, 530 U.S. 27, 49 (2000) (Thomas J., concurring). This grand jury handwriting exemplar case presents that very issue on a clean record of undisputed facts, and presents that rare certiorari opportunity where both an "originalist" construction of the Constitution, informed by history, conforms to an evolving international and scientific consensus regarding the constitutional provision at issue.

The second issue implicates the "trilemma" prohibition of the Fifth Amendment's Self-Incrimination Clause. This Court set out the "cruel trilemma" prohibition in *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 55 (1964), and reiterated the rule in *Doe v. United States*, 487 U.S. 201, 212-213 (1988) and other decisions. Nonetheless, the Eleventh Circuit Panel justified ignoring this controlling Supreme Court authority by holding that *Gilbert* foreclosed its application, while other federal courts have enforced the prohibition in similar grand jury subpoena matters.

Finally, Doe's "Brandeis Brief" documented extensive expert testimony and scientific and medical literature, all of which unequivocally demonstrated, without contest and beyond cavil, that handwriting is absolutely testimonial, not the "purely physical" trait the *Gilbert Court* assumed based upon the parties' stipulation there. Holding it was bound by *Gilbert*, though, the Panel did not even consider whether a "physical" handwriting exemplar had testimonial aspects, creating a conflict with decisions of the First Circuit in *United*

States v. Campbell, 732 F.2d 1017 (1st Cir. 1984), and the Ninth Circuit in *United States v. Velarde-Gomez*, 269 F.3d 1023 (9th Cir. 2001) (*en banc* reversal of appellate panel and trial court). Divergent federal court treatment of this issue demonstrates how unworkable the ill-advised testimonial/purely physical touchstone has become.

All of this casts substantial doubt upon the continued vitality of *Gilbert v. California,* 388 U.S. 263 (1967), the controlling handwriting exemplar case – doubt already raised by Justices Thomas and Scalia in *Hubbell*, 530 U.S. at 49. Not surprisingly – given *Gilbert's* historically doubtful, conceptually questionable, and factually erroneous assumptions – respected commentators, scholars, and international jurists have joined this thoughtful chorus of criticism and concern. Certiorari is urgently required to resolve conflicts and confusion in the circuits over this most important constitutional protection.

I. The Fifth Amendment Bars the State from Compelling any Witness to Produce Proof of His Own Crime Against His Will, Regardless of Whether that Evidence is Termed "Testimonial" or "Purely Physical."

Beginning with *Schmerber* and working its way through *Gilbert*, *Doe*, and other progeny cases, respectively *infra*, a tenuous and increasingly unworkable doctrine has insinuated itself into our Fifth Amendment jurisprudence. If left unchecked, time-honored constitutional protections against compelled self-incrimination will further erode. And ironically, as federal courts continue their tortuous wrestling with the testimonial/physical distinction that has become the ill-advised touchstone of Fifth Amendment self-incrimination analysis, American jurisprudence – the "cradle" of constitutional checks on state power over the individual –

drifts further away from both our core values and international jurisprudential norms.

This certiorari opportunity presents that rare case where both an "originalist" construction of the Constitution, informed by history, conforms to an evolving international and scientific consensus regarding the constitutional provision at issue. That both theories of judicial interpretation demand the same reversal result demonstrates the legal weakness and factually inaccurate predicates behind *Gilbert* and related cases. Furthermore, the actual challenged handwriting exemplar is part of this record, and as the district court observed and Doe can confirm, no other federal court has apparently examined these "form-driven" handwriting exemplars in a Fifth Amendment challenge context. (R. 29.) Certainly such a complete factual record was not present before the *Gilbert Court*.

The Eleventh Circuit Panel relied upon the narrowly decided and widely disputed prior precedent of this Court, which introduced the limitation of the word witness to "testimonial" evidence. Justice Thomas and Justice Scalia mutually called for revisiting the scope of the Fifth Amendment's Self-Incrimination Clause in an appropriate case. *See Hubbell*, 530 U.S. at 49 (Thomas, J., concurring). This is undoubtedly that case:

> A substantial body of evidence suggests that the Fifth Amendment privilege protects against the compelled production not just of incriminating testimony, but also of any incriminating evidence. In a future case, I would be willing to reconsider the scope and meaning of the Self-Incrimination Clause . . . None of this Court's cases, however, has undertaken an analysis of the meaning of the term at the time of the

> founding. A review of that period **reveals substantial support for the view that the term "witness" meant a person who gives or furnishes evidence, a broader meaning than that which our case law currently ascribes to the term. If this is so, a person who responds to a subpoena *duces tecum* would be just as much a "witness" as a person who responds to a subpoena *ad testificandum*.**

Hubbell, 530 U.S. at 49-50 (J. Thomas, concurring) (emphasis added).

In addition to the doctrinal weaknesses, factual inaccuracies, and pragmatically unworkable nature of prior Fifth Amendment precedent, the dual "re-visitation" recommendation of Justices Thomas and Scalia highlights the intense debate surrounding this issue going back decades when the testimonial/purely physical touchstone infected our jurisprudence. Justices Black and Douglas both considered the relatively recent limitation of the Fifth Amendment to "testimonial" evidence as historically suspect, doctrinally infirm, and conceptually unsound. History has supported their concerns. "It seems quite plain to me that the Fifth Amendment's Self-incrimination Clause was designed to bar the Government from forcing any person to supply proof of his own crime." *United States v. Wade*, 388 U.S. 218, 245 (1967) (Black, J., dissenting in part).

This case also presents an opportunity beyond conforming the Great Clause to its text and historical intentions; namely, harmonizing the Great Clause's protections with the policy interests the privilege serves, along the lines of Justice Goldberg's seminal *Murphy* decision. *See United States v. Balsys*, 524 U.S. 666, 713-14 (1998) (Breyer J., dissenting with Ginsburg, J.) (calling for a broader expansion of the

privilege along the lines of the policy interests it served and referencing *Murphy v. Waterfront Comm'n of New York Harbor*, 378 U.S. 52, 55 (1964)). The Fifth Amendment must be "accorded liberal construction in favor of the right it was intended to secure." *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951). The evidence must show that, with all inferences in favor of the witness, the witness is mistaken in his assertion of the privilege. *Id.* at 489.

The policy predicates for the Amendment are each implicated here:

> [T]he privilege is founded on our unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt; our preference for an accusatorial rather than an inquisitorial system of criminal justice; our fear that self-incriminating statements will be elicited by inhumane treatment and abuses; our sense of fair play which dictates a fair state-individual balance by requiring the government in its contest with the individual to shoulder the entire load; our respect for the inviolability of the human personality and of the right of each individual to a private enclave where he may lead a private life; our distrust of self-deprecatory statements; and our realization that the privilege, while sometimes a shelter to the guilty, is often a protection to the innocent.

Doe v. United States, 487 U.S. 201, 212-213 (1988) (internal citations and quotations omitted).

Analogous applications of the policies behind the privilege conform to a broader definition of the word witness than mere "testimonial content" under the Court's current construction,

including privacy interests and certain protections of inviolability against state intrusion. *See United States v. Nobles,* 422 U.S. 225, 233 (1975) (quoting *Couch v. United States,* 409 U.S. 322, 327 (1973)).

Justice Kennedy termed the Fifth Amendment right against self-incrimination as an "explicit right of a natural person, protecting the realm of human thought and expression." *Braswell v. United States*, 487 U.S. 99, 119 (1988) (Kennedy, J. dissenting). Justice Stevens concurred with Justice Kennedy's definition. *See Doe*, 487 U.S. at 220 (Stevens, J., dissenting). Justices Scalia and Thomas suggested going further and prohibiting compelling *any* self-incriminating evidence from a witness. *See Hubbell*, 530 U.S. at 49 (Thomas, J. concurring). Justices Breyer, Ginsburg and Souter all agreed with the Court's expansion of Fifth Amendment protections in *Hubbell*. *See Hubbell*, 530 U.S. 27 (2000). As commentators concluded, the *Hubbell* decision represented a "major power shift" in favor of a broader reading of the right by sharply limiting the scope of the non-testimonial exception to the definition of being a witness against oneself. Lance Cole, *The Fifth Amendment and Compelled Prod. of Personal Documents After United States v. Hubbell – New Protection for Private Papers?*, 29 Am. J. Crim. L. 123, 130 (Spring 2002).

In an age of cameras and wiretaps, internet spy-ware and email monitoring, cyber-stalking and invasive paparazzi, where conversations that once occurred behind the quietude of closed doors now transmit over the telephone, cable lines, and radio waves, the scope of protection from coercive state intrusion must meet the challenges of increasingly invasive modern investigative techniques, such as forensic stylistics and handwriting exams. American courts and international jurists increasingly recognize that this type of coercive

invasion into a person's activities should not expand without limits in proportion to the state's new means and methods of uncovering one's thoughts and communications. *See Kyllo v. United States*, 533 U.S. 27 (2001); *see also* Mark Prigg & Avril Williams, *Spies Behind Your Screen*, The Times (London), Aug. 6, 2000.

The state's power to expand and refine the scope of personal invasion and impose its own modern version of Bentham's panopticon or Foucault philosophy (who use just such comparable examples to argue the societies of the late Twentieth century are simply extended prisons), is precisely what has led to a chorus of criticism against undue invasions under the excuse of modern investigative techniques, a criticism joined by the Supreme Court in *Katz v. United States*, 389 U.S. 347 (1967) and *Kyllo*, 533 U.S. at 27. There, the Court rejected the legitimacy of these penetrating invasions that were made possible by scientific advances and increasingly sophisticated technology. *See e.g.*, Oscar H. Gandy, Jr., *The Panoptic Sort: A Political Economy of Personal Information*, (Boulder: Westview Press, 1993); Jeff Sovern, *Opting In, Opting Out, or No Options at All: The Fight for Control of Personal Information*, 74 Wash. L. Rev. 1033 (1999); Michel Foucault, *Discipline and Punish: The Birth of the Prison*, (Pantheon Books, 1st Am. Ed., 1977) (originally published in France as *Surveiller et punir: Naissance de la prison* (1975)); *Katz v. United States*, 389 U.S. 347 (1967); *Kyllo*, 533 U.S. 27 (2001).

The Court has recognized this evolving problem at least since *Schmerber*:

> To compel a person to submit to testing in which an effort will be made to determine his guilt or innocence on the basis of physiological responses, whether

> willed or not, is to evoke the spirit and history of the Fifth Amendment. Such situations call to mind the principle that the protection of the privilege "is as broad as the mischief against which it seeks to guard."

Schmerber v. United States, 384 U.S. 757, 764 (1966) (emphasis added) (internal citations and quotations omitted). Scholars affirm that *Schmerber* and its progeny intend to preserve "mental privacy;" something was testimonial when it invaded the privacy of the mind much as something was a search when it invaded the privacy of the home. *See* Arenella, *Schmerber and the Privilege Against Self-Incrimination: A Reappraisal*, 20 Am. Crim. L. Rev. 31 (1982) (testimonial definition designed to protect "mental privacy"). "The Fifth Amendment privilege against compulsory self-incrimination . . . protects a private inner sanctum of individual feeling and thought and proscribes state intrusion to extract self-condemnation." *Nobles*, 422 U.S. at 233 (quoting *Couch*, 409 U.S. at 327 (1973)).

Respected commentators label the privacy of one's intimate and idiosyncratic thought processes as critical and essential to privacy as the color of a rug on the floor in one's home protected in *Kyllo*. "Privacy rights in information about intellectual activities and preferences preserve the privacy interest in (metaphoric) breathing space for thought, exploration, and personal growth." Julie E. Cohen, *DRM And Privacy*, 18 Berkeley Tech. L.J. 575, 578 (2003). This reflects the robust, even if recent, recognition that a "central tenet" of our principles is the "inviolability of each individual's rights over her own person." *See id.* at 576. This is a frequent subject of scholarly concern, with new technologies allowing indirect ways to accomplish the very

kind of invasions the right to privacy was meant to protect against.[2]

Significantly, our own military courts have accepted the Black/Douglas, Thomas/Scalia, international/historical understanding of the Fifth Amendment: to be a witness is to provide any evidence against oneself, whether physical or testimonial. *See United States v. Musguire*, 9 U.S.C.M.A. 67 (C.M.A. 1958); *United States v. Minifield*, 9 U.S.C.M.A. 373 (U.S.C.M.A. 1967); *United States v. White*, 17 U.S.C.M.A. 211 (1967); *United States v. Penn*, 18 U.S.C.M.A. 194 (1969).

Moreover, the same logic underpinning American military jurisprudence and this Court's rationale in *Doe* permeates the decisions of respected international jurists assessing the same legal principles – in fact mirroring the High Court's own historic Fifth Amendment jurisprudence prior to the disputed and narrowly-decided departures of the Burger-era Court. *See Prosecutor v. Delalic*, Case No. IT-96-21-A (President of the Int'l Tribunal, Nov. 11, 1996) at http://www.un.org/icty/

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[2] Julie E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 Stan. L. Rev. 1373, 1424-28 (2000); Ruth Gavison, *Privacy and the Limits of Law*, 89 Yale L.J. 421 (1980); Seth F. Kreimer, *Sunlight, Secrets, and Scarlet Letters: The Tension Between Privacy and Disclosure in Constitutional Law*, 140 U. Pa. L. Rev. 1, 59-71 (1991); Jeffrey Rosen, *The Unwanted Gaze: The Destruction of Privacy in America*, (Random House 2000) (arguing that privacy protects the individual interest in not being judged "out of context"); Daniel J. Solove, Conceptualizing Privacy, 90 Cal. L. Rev. 1087 (2002); Michael Adler, Note, *Cyberspace, General Searches, and Digital Contraband: The Fourth Amendment and the Net-Wide Search*, 105 Yale L.J. 1093 (1996).

celebici/trialc2/decision-e/80119EV2.htm. Indeed, international tribunals consider the "physical exceptions" jurisprudence currently pervading our Fifth Amendment law as an aberrant departure from the Great Clause's plain text, history, and predicate policies, and have discarded it on that basis. *See* Cristian Defrancia, *Due Process in Int'l Criminal Courts: Why Procedure Matters*, 87 Va. L. Rev. 1381, Nov. 2001. As these decisions recite, the paramount interest of being left alone by the state when the target of criminal investigation must be safeguarded if individuality is to mean anything. *See Delalic*, *supra*.

As the International Tribunal held:

> Before the assault on the right to Fifth Amendment protection from self-incrimination . . . a majority of the Courts . . . were of the opinion that the right no to give evidence . . . encompassed the right to refuse to relate passively or actively with the prosecution . . . The unqualified meaning is that an accused cannot be compelled to do or say anything that may tend to incriminate him . . . Nowhere is the privilege from self-incrimination qualified or restricted to testimonial evidence . . . Such a construction will subvert the intention of the protection by introducing a qualification inconsistent with the true basis of the protection . . . The true basis of the protection against self-incrimination is to protect the innocent by insulating him from the effects of coercion by law enforcement authorities . . . Mucic cannot be ordered to provide a handwriting sample. This would involve him testifying against himself.

Delalic, (decision dated January 19, 1998),

http://www.un.org/icty/celebici/trialc2/decision-e/80119EV2.htm.

Aside from the compelling logic, shared textual application, and historic correctness of the court's ruling, Justices of this Court recognize the need to reconsider matters where international legal consensus so recommends. *See Roper v. Simmons*, 543 U.S. 551 (2005); *see also Lawrence v. Texas*, 539 U.S. 558 (2003). International jurists, following what they see as the original intent of the Great Clause, have applied its protections in the same manner called for by Justices Thomas and Scalia. *See Delalic*, *supra*. Justice Souter has expressed a similar willingness when international law recommends a broader understanding of a constitutional right. *See Roper*, 543 U.S. 551. Justices Breyer, Ginsburg, and Stevens have been similarly inclined. *See id.*

II. The Fifth Amendment Bars the State From Forcing a Witness to Choose Between Self-Accusation, Obstruction, or Contempt.

The second issue presented by this case implicates the "trilemma" interpretation of the Fifth Amendment's Self-Incrimination Clause. This Court's prior decisions recognize the "cruel trilemma" prohibition, which the Eleventh Circuit rejected below on grounds that *Gilbert* foreclosed quashing the challenged exemplar on that basis, despite contrary holdings from twin district courts within the Seventh Circuit. *See United States v. Green*, 282 F. Supp. 373, 374 (D.C.Ind. 1968) (quashing handwriting exemplar); *In re Layden*, 446 F. Supp. 53, 57 (D.C.Ill. 1978) (quashing handwriting exemplar). As this Court previously opined:

> At its core, **the privilege reflects our fierce unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt,** that defined the operation of the Star Chamber, wherein suspects were forced to choose between revealing incriminating private thoughts and forsaking their oath by committing perjury. We need not explore the outer boundaries of what is "testimonial" today, for our decision flows from the concept's core meaning. Because the privilege was designed primarily to prevent a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality, **it is evident that a suspect is compelled to be a witness against himself at least whenever he must face the modern-day analog of the historic trilemma . . .**

Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990) (emphasis added) (internal citations and quotations omitted); *see also Doe,* 487 U.S. at 212-213.

Respected commentators concur. *See e.g.*, Weston & Mandell, *To Talk, To Balk, or To Lie: The Emerging Fifth Amendment Doctrine of the 'Preferred Response,'* 19 Am. Crim. L. Rev. 521 (1982); Greenawalt, *supra*; Wigmore, Evidence in Trials at Common Law, § 2251, at 316-317 (J. McNaughton rev. ed. 1961).

Essentially, this issue explores the meaning of *Schmerber's* broad caveat to the "testimonial-only" definition of witness.

> **To compel a person to submit to testing in which an effort will be made to determine his guilt or innocence on the basis of physiological responses,**

> **whether willed or not, is to evoke the spirit and history of the Fifth Amendment.** Such situations call to mind the principle that the protection of the privilege "is as broad as the mischief against which it seeks to guard."

Schmerber v. United States, 384 U.S. 757, 764 (1966) (emphasis added) (internal citations omitted).

Normally, the cruel trilemma only arises in cases involving subpoenas *ad testificandum*, but subpoenas for handwriting or voice exemplars pose an exception to this understanding, creating the same sort of trilemma facing a witness presenting oral testimony:

> Since one cannot falsify physical characteristics such as blood, there is no falsehood to excuse and therefore no need to immunize non-cooperation. This theory may run into some problems . . . Handwriting and voice samples can be altered, so that if alteration were excusable for the same reason as self-protective perjury, non-cooperation with the police ought to be immunized by the Fifth Amendment privilege against self-incrimination.

William J. Stuntz, *Self-incrimination & Excuse*, 88 Colum. L. Rev. 1227, 1276-1277 (1988).

A classic example of this trilemma faced Ed Johnson, a young black man accused of raping a white woman, in a famous case at the turn of the last century. Johnson was forced to provide a voice exemplar in front of the victim. If he mimicked the soft tones of the alleged rapist, he provided evidence against himself; if he changed the tones of his voice, he faced the accusation of providing a "false" voice

exemplar, obstructing justice; if he refused all together, he faced contempt. Ultimately after a trial later condemned as a rogue trial, Johnson was convicted and ultimately lynched when the Supreme Court took up his case. His last words proved true: "I am an innocent man." *See* Mark Curriden and Leroy Phillips, *Contempt of Court*, Anchor Books (1999).

The long-standing desire for confessions as a tool of criminal justice required judicial protection against forcing witnesses into the trilemma of self-accusation, obstruction or contempt for the same *raison d'entre*: coercing confessions under such circumstances voids both the moral benefit and the practical utility of the confession. *See* Stuntz, *supra*. The defense of duress within the criminal law borrows from the same logic: a person that makes a wrongful choice should not be held as accountable when facing cruel choices as someone who did not face such choices. *See id.*

Surmising these policy predicates, scholars note that the Great Clause protects against compelling a person to act as their own accuser through coercive impositions by the State. *See* R. Kent Greenawalt, *Silence As A Moral And Constitutional Right*, 23 Wm. & Mary L. Rev. 15 (1981). Such punishment offends our collective moral intuition, undermines the justice system's goal of deterrence, and casts a Star Chamber-like shadow over our system of criminal process and justice. Avoiding the imposition of cruel choices on the witness protects their moral dignity, mental privacy, and individual autonomy, while upholding the enforcement of the state's laws without casting a shadow over the honesty of the outcomes inquisitorial methods invites.

Furthermore, all of this Court's Justices have expressed an interest in the trilemma problem, *see Muniz*, 496 U.S. at 601, and the Court has expressly recited from Stuntz's seminal

article for guidance in the Court's most recent explications of the Self-Incrimination Clause's meaning. *See Hubbell*, 530 U.S. at 42, n.23 (citing Stuntz, *supra*, at 1228-29, 1256-59, 1277-79). All of this counsels strongly for granting certiorari here.

III. The Fifth Amendment Prohibits State Compulsion of Handwriting Exams When Overwhelming Scientific Evidence Documents that Handwriting Discloses the Contents of the Mind, and Is Not a Mere Physical Trait of the Hand.

This issue goes directly to the factually erroneous stipulation of the parties leading to this Court's assumption in *Gilbert*: namely, that handwriting was an involuntary muscular pattern of the hand, and did not convey mental impressions. Most of the prior case law relied upon the legal, not scientific, treatise of the long-deceased Professor Wigmore. *See* 8 J. Wigmore, Evidence § 2192 at 70 (McNaughton rev. 1961). Justice Hugo Black commented long ago on Wigmore's hostility to aspects of the Self-Incrimination Clause. *Wade*, 388 U.S. at 245 (Black, J., dissenting in part). Moving to the current Court's concerns, Justice Stevens has expressed a particular interest in the ill-advised physical/mental distinction, *Doe*, 487 U.S. at 210, n.9 (Stevens, J., *dissenting*). Here, Doe's "Brandeis Brief" filed in the district court documents the expert testimony and the scientific community's shared conclusions: handwriting is a mental characteristic, not a mere physical trait. Handwriting divulges more of the contents of a person's mind than spelling does and calls on the mind to index and access more individual information than Mr. Hubbell's response to a subpoena for documents. The government made no attempt to disagree in any of its filings below.

The Eleventh Circuit's narrow reading of the meaning of "testimonial content" within the context of *Gilbert* also creates a conflict between the Circuits. *See United States v. Matos*, 990 F. Supp. 141, 144 (E.D.N.Y. 1998); *United States v. Wade*, 1995 WL 464908 (S.D.N.Y. 1995); and *United States v. Campbell*, 732 F.2d 1017 (1st Cir. 1984). The Eleventh Circuit held that content only goes to the substance of what is written rather than whether the exemplar discloses mental content. The First Circuit and several district courts within the Second Circuit disagree:

> Information about Wade's thought processes falls within the scope of his Fifth Amendment right to be spare[d] from having to reveal, directly or indirectly, his knowledge of facts or from having to share his thoughts and beliefs with the Government. . . . The Fifth Amendment privilege reaches an accused's communications, whatever form they might take. . . . Even a shadow of testimonial compulsion upon or enforced communication by the accused is strictly proscribed by the Self-Incrimination Clause.

US. v. Wade, 1995 WL 464908, at 3 (S.D.N.Y. 1995) (internal citations and quotations omitted).

Equally, the Ninth Circuit also rejected the definition of "testimonial" adopted here by the Eleventh Circuit, holding that otherwise purely physical acts are testimonial when they communicate something about the person's thought processes, mental states, or mental knowledge. *See United States v. Velarde-Gomez*, 269 F.3d 1023 (9th Cir. 2001) (*en banc* reversal of appellate panel and trial court).

It is the communicative qualities of the compelled activity, not the content of those communications, that constitute the

impermissible invasion of the mind under the Court's current testimonial construct of the Fifth Amendment privilege. Justice Stevens has noted the distinction: if the key is in the hand, like a key to a lockbox, then it is physical evidence, and can be compelled; if the key is in the mind, like the combination to a safe, then it is mental evidence, and cannot be compelled. *See Hubbell*, 530 U.S. at 43 (citing *Doe*, 487 U.S. at 210, n.9).

Furthermore, the nation's leading forensic handwriting expert, who himself trained many of the government's handwriting experts, testified in support of Doe's position that handwriting communicated mental thought processes. *See Aff. of Larry F. Ziegler*, R. 15; *see also United States v. Paul*, 175 F.3d 906, 911 (11th Cir. 1999) (noting that Larry Ziegler, then an FBI analyst, established both the Secret Service's and the Naval Investigative Service's questioned document laboratories). Ziegler, the very man who founded many of the government's own handwriting analysis laboratories, opined that handwriting exemplars test for mental disclosures, not physical traits. *See Aff. of Larry F. Ziegler*, R. 15, ¶ 10. "Handwriting is a form of self-expression that discloses both unconscious and conscious thought process of the writer." *Id.*, ¶ 5. These disclosures communicate the "individual peculiarities" of the writer's mind, divulged "with the way they shape their letters and their connective strokes between letters." *Id.* This "personalization of letters and connective forms of the writer are often seen in people regardless of what appendage they write with." *Id.*, ¶ 7.

In other words, had Professor Wigmore spent more time studying the science of handwriting than maneuvering the law toward his personal predilection, he would have known that handwriting cannot be the result of an involuntary muscular

pattern of the hand, because a particular person's writing can be easily identified even if they write with their foot or their mouth – astonishing as that seems. Thus, handwriting will "disclose facts about the writer, including the extent of conscious and unconscious thought in the writing." *Id.* It is the unique "thought process" of the writer that handwriting discloses. *Id.* at ¶ 8. The vast majority of domestic and foreign experts agree in their collective literature. [3]

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[3] *See e.g. They Write Their Own Sentences: The FBI Handwriting Analysis Manual* (Paladin Press, 1987); A. Naftali, *Behavior Factors in Handwriting Identification*, 56 J. of Crim. L.; Criminology and Police Science 530 (1965); H. Hardy, *Methodological Aspects Of Handwriting Identification*, J. of Forensic Document Examination, (Fall 1995); Leonard Speckin, *Evidence of Multiple Personality Disorder in Handwriting*, 81 Mich. B.J. 46 (Oct. 2002); M.G. Longstaff, *The Influence of Tremor on Handwriting Performance Under Conditions of Low and intermediate Physical Stress*, J. of Forensic Document Examination, p. 25-44 (2000); Vaclava Musilova, Ph.D., *Forensic Linguistic Examination Of Anonymous Communications*, J. of Forensic Document Examination (Fall 1993); James P. Conway, *Evidential Documents*, (Charles C. Thomes Pub., 1978), at 53; James T. Miller & Irby Todd, *Abnormal Handwriting*, Questioned Document Training Manual, 1975 ed., U.S. Secret Service; J. Michael Hull, *Relationship Between Disguised Handwriting and Formal Education*, paper presented at the Am. Academy of Forensic Sciences, 2/20/91, Anaheim, California; *The Power of the Written Word*, The Economist, June 16, 1990, at 97; Penelope Pickett, *Linguistic Examination of Documents As An Aid In Investigations*, FBI Laboratory, (presented at the 43rd Annual Meeting of the American Academy of Forensic Science), Anaheim, California, February 1991; Pat Tull, *Handwriting and Signatures of the Visually Impaired*, J. of Forensic Document Examination, 35-54 (Fall 1992); Thomassen & Van Galen, *Temporal Features of Handwriting: Challenges for Forensic Analysis*, J. of Forensic

Document Examination (Fall 1997); C. Mitchell, *Handwriting and It's Value*, J. of Royal Society of Arts (1923); Ron N. Morris, *Forensic Handwriting Identification: Fundamental Concepts and Principles* (Academic Press 2000); R.F. Ruenes, *Perception and handwriting identification*, J. of Forensic Sciences 12:102-111 (1967); Van Galen & Van Gemmert, *Kinematic And Dynamic Features Of Forging Another Person's Handwriting*, J. of Forensic Document Examination (Fall 1996); Smits-Engelsma, et al., *Handwriting And Its Temporal Evolution: A Process-Oriented Perspective*, J. of Forensic Document Examination, at 27-29 (Fall 1996); Ordway Hilton, *Scientific Examination of Questioned Documents*, at 172 (Rev'd ed., CRC Press 1992); Charles Darwin, *The Descent of Man* (2nd ed. 1874); William James, *The Principles of Psychology* (1890). W. Preyer, *On the Physiology of Handwriting* (Hamburg 1895); G. Allport & P. Vernon, *Studies in Expressive Movement*, (Macmillian 1933) (noting the congruence, in multiple controlled experiments, between expressive movements unique to an individual's handwriting and the mental attributes of the person); G. Denes, M. Signorini, C. Volpato, *Post graphemic impairments of writing: the case of micrographia*, Neurocase, 11(3):176-81 (June 2005); R. Varley, P.E. Cowell, A. Gibson, C.A. Romanowksi, *Disconnection agraphia in a case of multiple sclerosis: the isolation of letter movement plans from language*, Neuropsychologia, 43(10):1503-13 (2005); C. Papagno, L. Girelli, *Writing through the phonological buffer: a case of progressive writing disorder*, Neuropsychologia, 43(9):1277-87 (2005); R. Mergl, G. Jukel, V. Henkel, M. Karner, P. Tigges, A. Schroter, U. Hergerl, *Kinematical Analysis Of Handwriting Movements In Depressed Patients*, Acta Psychiatr Scand. 109(5): 383-391 (May 2004); P. Mayrogiogou, et al, *Kinematic Analysis Of Handwriting Movements In Patients With Obsessive-Compulsive Disorder*. J Neurol Neurosurgery Psychiatry, 70(5):605-12 (May 2001); G. Jukel, R. Mergl, U. Hegerl, *Kinematic Movement Analyses and Their Application In Psychiatry*, Psychiatr. Prax. 32 Suppl. 1:S31-7 (Apr. 2005); J.J. Freyd, *Handwriting's relation to mental states* (1987); *Dynamic mental representations*. 94 Psychological Rev. at

427-438 (1987); David Lesser, Ph.D., *The Psychological Basis of Handwriting Analysis: the Relationship of Handwriting to Personality and Pyschopathology* (Nelson Hall 1981); J.S. Brown, J.L. McDonald, T.L. Brown, & T.H. Carr, *Adapting To Processing Demands In Discourse Production: The Case Of Handwriting*, 14 J. of Experimental Psychology: Human Perception and Performance, at 45-59 (1988); A.W.A. Van Gemmert and G.P. Van Galen *Stress, Neuromotor Noise And Human Performance: A Theoretical Perspective*, 23 J. of Experimental Psychology: Human Perception and Performance, at 1299-1313 (1997); A.M. Wing & A.D. Baddeley, *A Simple Measure Of Handwriting As An Index Of Stress*, 11 Bulletin of the Psychonomic Society, at 245-46 (1978); H.H. Emmen, B.M. Kulig, & C. Sennef, *The Development And Evaluation Of A Computerized Test Battery Including A New Verbal Memory Test, For The Assessment Of The Effects Of Drugs And Chemical Exposures*. Report TNO-MBL 1993, Rijswijk NL TNO Medical Biological Laboratory; K. Matsuo, C. Kato, F. Ozawa, Y. Takehara, H. Isoda, S. Isogai, T. Moriya, H. Sakahara, T. Okada, T. Nakai, *Manipulo-Spatial Processing Of Ideographic Characters In Left-Handers: Observation In MRI.* Magn Reson Med, 1(1): 21-26 (2002) (noting differences in cerebral organization for language processing as evidenced in MRI studies of brain activity for those who write with their left hand.); S.B. Buklina, *The Corpus Callosum, Interhemisphere Interactions, And The Function Of The Right Hemisphere Of The Brain*, Neurosci Behav Physiol, 35(5): 473-80 (June 2005); S.T. Peverly, *The Importance Of Handwriting Speed In Adult Writing*, Dev Neuropsychol., 29(1):197-216 (2006); V.W. Berninger, R.D. Abbott, J. Jones, B.J. Wolf, L. Gould, M. Anderson-Youngstrom , S. Shimada, K. Apel, *Early Development Of Language By Hand: Composing, Reading, Listening, And Speaking Connections; Three Letter-Writing Modes And Fast Mapping In Spelling*, Dev Neuropsychol., 29(1):61-921 (2006); O. Tucha, K.W. Lange, *The Effect Of Conscious Control On Handwriting In Children With Attention Deficit Hyperactivity Disorder*, J Atten Disord., 9(1):323-32 (Aug. 2005); M.

Several cases also document how handwriting experts use handwriting as a "common" tool of psychological diagnosis. *See United States v. Caldwell*, 543 F.2d 1333, 1353, n. 99 (D.C. Cir. 1976). Another federal appellate court referenced handwriting experts admitted to testify using their understanding of a person's handwriting to assess the person's mental competency to stand trial. *See Klein v. United States*, 880 F.2d 250, 259, n. 12 (10th Cir. 1989) (citing 35 A.F.T.R.2d 75-1282 (10th Cir. 1975)); *see also Klein v. Comm'r of Internal Revenue*, 880 F.2d 260 (10th Cir. 1989).

In the last decade, three federal appellate courts have effectively reversed the ancient rule established by old Supreme Court opinions that a comparison of hands cannot constitute an expertise and competent testimony, even under the newly restrictive standards of *Daubert* and its progeny. *See United States v. Paul*, 175 F.3d 906 (11th Cir. 1999) (affirming handwriting analysis as expertise within restrictive standards of *Daubert*); *see also United States v. Jones*, 107

Greenwald, *"Blocking" lexical competitors in severe global agraphia: a treatment of reading and spelling*, Neurocase, 10(2):156-74 (Apr. 2004); M.J. Tainturier & B.C. Rapp, *Complex Graphemes As Functional Spelling Units: Evidence From Acquired Dysgraphia*, Neurocase, 10(2):122-31 (Apr. 2004); J.R. Folk & A.C. Jones, *The Purpose Of Lexical/Sublexical Interaction During Spelling: Further Evidence From Dysgraphia And Articulatory Suppression*, Neurocase, 10(1):65-9 (Feb. 2004); *Effect Of Modality On Spelling Words Varying In Linguistic Demands*, Dev Neuropsychol., 29(1):261-77 (2006); Bryan Found & Doug Rogers, *Documentation Of Forensic Handwriting Comparison And Identification Method: A Modular Approach*, J. of Forensic Document Examination, at 2-3 (Fall 1999).

F.3d 1147 (6th Cir. 1997), and *United States v. Velasquez*, 64 F.3d 844 (3d Cir. 1995). The role of such experts is to do what a court could not compel a person to do in producing one's private papers: "compare writing on one document with that on another in order to authenticate the document." *Jones*, 107 F.3d at 1159. The study of hand movements, now recognized as an expertise under federal law, examines the "relationship between neural representations, artifacts of movement, complexity of images and what can reasonably be said regarding authorship of entries based on these elements." *Jones*, 107 F.3d at 1160. Needless to say, neural representations do not exist in the hand.

In other words, what converted "comparison by hand" from a disfavored category of incompetent testimony under the old Supreme Court decisions into a new area of specialized expertise was the revelation that handwriting is personally identifiable because of the unique "neural representations" of the human mind in translating thoughts to written form through the medium of written images, neural representations which communicate everything from the slant of the writing to the spaces between letters, to the way one crosses a "t" or dots an "i." This is particularly manifest where the Department of Justice itself has advocated that handwriting is so personal and private, that Internal Revenue Service employees can keep it hidden from the public's Freedom of Information Act requests. *See Church of Scientology Int'l v. IRS*, 995 F.2d 916, 920-21 (9th Cir. 1993) (holding that privacy interest in handwriting of IRS agents prevents disclosure).

Perhaps most noteworthy is how handwriting analysis has become exactly what the Supreme Court warned against in *Schmerber*; i.e., utilizing requests for supposed "physical" evidence as a guise to acquire behavioral or other mental

information that communicates information and "testifies" against the compelled provider, such as the lie-detector particularly critiqued as likely violating the Fifth Amendment in *Schmerber*, even if all it tested was "physiological" information about a person. *See Schmerber*, 384 U.S. at 764; *see also* John Bacon, *The Handwriting Is on the Wall for Lie Detector Tests*, Gannett News Serv., May 24, 1988, (Boyden International, a senior executive head-hunting firm with offices in 15 cities and 26 countries, uses handwriting analysis to screen applicants).

As this Court has noted, it is exactly facts like these that necessitate revisiting precedent: when a decision "is so clearly at odds with the facts apparent to the Court" – as evidenced here by the movant's Brandeis Brief of uncontested expert testimony from the government's own leading expert and scientific testimony and governmental publications – then reversal is "not only justified, but required." *See Planned Parenthood*, 505 U.S. at 863. The *Gilbert* Court never conducted any inquiry or evaluation into the true state of the science of handwriting, largely because the defendant in the case never raised it. The Supreme Court was obviously not extending its legal authority to matters of science in the long discredited fashion of the old ecclesiastical courts that once imposed religious ideology on scientific matters.

Where such facts were demonstrated in the seminal case briefed by Louis Brandeis that gave name to the "Brandeis Brief," the Court found that precedent based on general assumptions did not dictate ignoring the factual evidence in the particular case. *See Muller v. Oregon*, 208 U.S. 412 (1908) (noting the precedent of *Lochner v. New York*, 198 U.S. 45 (1905), did not apply where the factual assumptions of *Lochner* were disproved by the more detailed record in *Muller*). A lower court applied the same principle when it

rejected the application of prior Supreme Court precedent to the unique facts before it, facts that conflicted with the prior assumptions underlying the prior precedent. *See Parrish v. West Coast Hotel Co.*, 55 P.2d 1083 (1937) (affirmed in *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937)).

The overwhelming weight of this literature details how this challenged exemplar will disclose communicative testimony from Doe: his mental states, his mental perceptions, and his personality, all of which are far more personal and testimonial than the prohibited spelling tests already quashed by several Circuit courts and district courts. Given the detailed and uncontested literature recited above, any *Gilbert* holding of handwriting as a physical trait of the hand, such as an involuntary muscular pattern, urgently demands reconsideration of that precedent on certiorari here.

CONCLUSION

While a jurisprudence of doubt is no refuge to liberty, a doubtful jurisprudence is no more her safe harbor. This petition presents compelling reasons for the Court to grant certiorari and reverse the Eleventh Circuit's improvident decision – a decision that unfortunately continues a long line of federal court misapprehension of Fifth Amendment metes and bounds that urgently demands the Court's attention. Moreover, Doe presents the most substantial Fifth Amendment questions in the context of handwriting exemplars in more than four decades, raising the very same issues highlighted by Supreme Court Justices, leading international jurists, the Academy, and leading scientific and medical experts. Doe's Petition for Writ of Certiorari should be granted.

Dated: June 1, 2006

Respectfully Submitted,

THE LAW OFFICE OF
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Attorneys for the Petitioner
John Doe

APPENDIX A

SEALED CASE
[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-11683
Non-Argument Calendar

[Filed April 13, 2006]

IN RE: GRAND JURY SUBPOENA	)
No. 2002R02810(163)	)
No. 2005-01 to JOHN DOE,	)
	)
Appellant.	)
	)

Appeal from the United States District Court
for the Middle District of Florida

Before: MARCUS, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

John Doe[1] appeals the order of contempt entered against him by the district court when he asserted his Fifth Amendment right against self-incrimination and refused to comply with the order of the district court to perform a handwriting exemplar in conjunction with a grand jury investigation. Doe argues that the handwriting exemplar is compelled self-incrimination because handwriting conveys mental impressions that are clearly testimonial and communicative with the meaning of the Fifth Amendment. Because the Supreme Court has held that compelled handwriting exemplars do not violate the privilege against self-incrimination found in the Fifth Amendment and Doe does not challenge the content of the exemplars, we affirm.

In December 2005, Doe was served with a Grand Jury Subpoena that commanded him to provide a handwriting exemplar. After several extensions of time to perform the exemplar, Doe filed a motion to quash the subpoena on January 31, 2006. Doe argued that handwriting is not a mere physical trait, but a conveyance of mental impressions, and that he could not be forced to perform a handwriting exemplar in violation of his Fifth Amendment privilege against self-incrimination. The district court held a hearing on the motion on February 2, 2006, and granted in part and denied in part the motion on February 15, 2006. The district court concluded that it was bound by Supreme Court precedent in Gilbert v. California, 388 U.S. 263, 87 S. Ct. 1951 (1967), which held that handwriting exemplars did not offend the

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[1] Because this appeals involves proceedings before a grand jury, and the briefs and record on appeal are under seal, we use a pseudonym to preserve anonymity.

Fifth Amendment privilege against self-incrimination, but the district court held that certain portions of the handwriting exemplar provided by the government were testimonial and redacted those portions. The district court ordered Doe to comply with the redacted handwriting exemplar by March 1, 2006. Doe again asserted his Fifth Amendment right against self-incrimination and refused to perform the handwriting exemplar. The district court held Doe in civil contempt. This appeal followed.

"The applicability of a privilege involves a mixed question of law and fact. Purely factual issues are subject to the 'clearly erroneous' standard of review and the application of law to facts is determined de novo by the court of appeals." In re Grand Jury Subpoena Dated Nov. 12, 1991, 957 F.2d 807, 809 (11th Cir. 1992).

In Gilbert, the Supreme Court held that "[a] mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside its protection. No claim is made that the content of the exemplars was testimonial or communicative matter." Gilbert v. California, 388 U.S. 263, 267, 87 S. Ct. 1951, 1953 (1967). Doe argues that because scientific evidence shows that handwriting is a process of the brain, not the hand, which discloses conscious and unconscious thought processes, a handwriting exemplar provides testimonial evidence. Doe contends that Gilbert did not address whether a handwriting exemplar could compel testimonial disclosures but was predicated on the sweeping caveat that no "claim [wa]s made that the content of the exemplars was testimonial or communicative."

Doe's argument fails. The Court in Gilbert held that it is the content of what is written that alters the non-testimonial

nature of a handwriting exemplar. Doe does not challenge the content of the handwriting exemplar, but the fact of the exemplar. Despite Doe's arguments to the contrary, the Supreme Court has held that a handwriting exemplar is an identifying physical characteristic that falls outside the protection of the Fifth Amendment, and we are not at liberty to disregard that clear precedent. Hohn v. United States, 524 U.S. 236, 252-53, 118 S. Ct. 1969, 1978 (1998).

Doe also argues that he cannot be compelled to produce a handwriting exemplar when the act of subscribing is an element of the offense. Nothing in Gilbert, however, suggests that a handwriting exemplar would become testimonial evidence or would be privileged if subscribing were an element of the offense. The order of the district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

No. 3:06-mc-1-j-32MMH

[Filed February 15, 2006]

IN RE: GRAND JURY SUBPOENA	)
NO. 2002R02810(163) ISSUED	)
GRAND JURY NO 2005-01 TO	)
XXXXX XXXXX XXXXX	)
	)

IN CAMERA ORDER

This case is before the Court on the United States' *In Camera* Motion for an Order to Show Cause Why Witness Should Not be Held in Contempt of Court (Doc. S-5), and petitioner XXXXX XXXXX XXXXX's Motion to Quash Grand Jury Subpoena. (Doc. S-13). Petitioner responded in opposition to the United States' Motion, (Doc. S-7), and the United States responded in opposition to petitioner's Motion (Doc. S-16). On February 2, 2006, the Court heard *in camera* argument on both motions.

I. BACKGROUND

On December 1, 2005, petitioner's attorney accepted service of a grand jury subpoena directing petitioner to appear

at the United States Courthouse in Jacksonville, Florida to provide a handwriting exemplar. The parties agreed to an extension of time to January 17, 2006 for petitioner to comply with the subpoena. After the parties were unable to agree to a further extension, the government filed *in camera* for an order to show cause why the petitioner should not be held in contempt for failure to complete the exemplar. Petitioner filed an *in camera* motion for an order continuing his appearance to afford him the opportunity to research and file a motion to quash the subpoena. (Doc. S-3). On January 20, 2006, the Court held an *in camera* telephone hearing to discuss the status of this matter. At the hearing, the Court granted petitioner's motion for extension of time to file a motion to quash the subpoena, and set the February 2, 2006 *in camera* hearing on the motion to quash and the government's motion for an order to show cause. Petitioner submitted the motion to quash (Doc. S-13) and a memorandum in support of the motion (Doc. S-15) on January 31, 2006. The government submitted its response (Doc. S-16) at the February 2, 2006 hearing. The government's motion for an order to show cause and petitioner's motion to quash are considered in conjunction.

The grand jury seeks a handwriting exemplar from petitioner in furtherance of a criminal tax investigation. The government posits that Supreme Court precedent clearly establishes that a handwriting exemplar provided by the target of a criminal investigation does not implicate the Fifth Amendment privilege against self-incrimination. Petitioner assails the government's position and states that the overwhelming majority of publications by handwriting and psychological experts establish that handwriting itself is an "intellectual process," and compelling an individual to provide an exemplar impermissibly delves into the mind of the individual; thus, the giving of the exemplar is not just a

physical act, but a testimonial and communicative exercise in violation of the Fifth Amendment. Petitioner further states that requiring such an exemplar violates the Fourth Amendment because he has a reasonable expectation of privacy in his handwriting, Petitioner finally argues that the government has failed to show that the subpoena is relevant to the grand jury investigation. The government responds that procuring a handwriting exemplar does not implicate the Fourth Amendment because petitioner does not have a reasonable expectation of privacy in his signature or writing, and that the handwriting exemplar is relevant to the tax fraud investigation.

II. DISCUSSION

A. Fifth Amendment

The Fifth Amendment provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. The seminal case on the constitutionality of handwriting exemplars under the Fifth Amendment is Gilbert v. California, 388 U.S. 263 (1967).

In Gilbert, the petitioner appealed his conviction for murder and robbery on multiple grounds, one of which was his claim that the FBI requiring him to provide a handwriting exemplar violated his Fifth Amendment right against self-incrimination. 388 U.S. at 266. The Supreme Court held that a handwriting exemplar merely displays a physical characteristic and thus is outside Fifth Amendment protections. Id. at 267. The Court noted that the Fifth Amendment only protects "communications, whatever form they might take," and distinguished a handwriting exemplar as falling outside of the protection because it is not "testimonial" or "communicative" in nature. Id. at 266-67.

The Court, however, somewhat qualified its holding and stated that "[n]o claim is made that the content of the exemplars was testimonial or communicative matter." Id. at 267.

After Gilbert, the jurisprudence on handwriting exemplars remained undisturbed for the ensuing thirty-three years, including the most recent Eleventh Circuit case on the issue, United States v. Stone, 9 F.3d 934, 942 (11th Cir. 1993), where the Court's holding is consistent with Gilbert. However, in United States v. Hubbell, 530 U.S. 27 (2000), Justice Thomas issued a concurring opinion, in which Justice Scalia joined, stating that in future cases he "would be willing to reconsider the scope and meaning of the Self-Incrimination Clause." 530 U.S. 27, 49 (concurring, J., Thomas).

In Hubbell, the Court considered the issues of (1) whether the Fifth Amendment privilege against self-incrimination protects a witness from being compelled to disclose the existence of incriminating documents that the government cannot describe with reasonable particularity, and (2) if the witness produces such documents pursuant to a grant of immunity, whether federal law prevents the government from using those documents to bring criminal charges against him. 530 U.S. at 29-30. The Court held that because the witness's act of production was testimonial in nature, he could not be compelled to respond to the subpoena without a grant of immunity under 18 U.S.C. § 6003. Id. at 45-46.

In the concurrence, Justices Thomas and Scalia state that they would be willing to re-examine the entire scope of the Self-Incrimination Clause. Id. at 49 (concurring, J., Thomas). In articulating their position, these Justices note that Supreme Court jurisprudence has limited the definition of the Fifth Amendment term "witness" to a "person that

provides testimony," restricting the protection to those communications that are "testimonial" in nature. Id. at 49-50 (concurring, J., Thomas). Justices Thomas and Scalia advocate a broader reading of the term "witness," contending the framers of the Constitution chose the word "witness" because it not only meant "to provide testimony," but also "to give evidence" or "to furnish evidence." Id. at 50, 52-54 (concurring, J., Thomas). If the Supreme Court were ultimately to agree with Justice Thomas' definition, the logical result is that a grand jury subject or target may not be able to be compelled to perform any incriminating act, even those considered merely "physical," such as providing a handwriting exemplar.

Further, federal courts have addressed "testimonial" aspects of handwriting exemplars and held that exemplars procured from dictation, rather than from simply copying written words or phrases, are testimonial and communicative, and thus subject to Fifth Amendment protection. See United States v. Campbell, 732 F.2d 1017, 1021 (1st Cir. 1984) (a handwriting exemplar pursuant to oral dictation violates an individual's Fifth Amendment rights because when the writer pens a word that is dictated, as opposed to merely being asked to write a word that is provided, it is akin to the individual providing the testimonial message of "[t]his is how I spell it"); see also United States v. Matos, 990 F.Supp. 141, 144 (E.D.N.Y, 1998) (requiring a person to provide an exemplar from dictation that does not provide the spelling of the dictated words removes the handwriting exemplar from the purview of a mere physical act and into the realm of a testimonial or communicative act); United States v. Wade, 1995 WL 464908, *2 (S.D.N,Y. 1995) (because a dictated handwriting exemplar requires the individual to demonstrate his cognitive abilities and reveal his thought processes, such an exemplar is prohibited by the Fifth Amendment); Cf.

United States v. Carrasquillo, 2004 WL 102774, *4 (S.D.N.Y. 2004) (only exemplars performed by dictation that contain spelling errors should be excluded under the Fifth Amendment).

Here, the United States does not seek to obtain petitioner's exemplar through dictation, thus the Campbell line of cases is inapplicable. However, based on the view Justices Thomas and Scalia espouse in Hubbell, it is no longer free from all doubt that the Supreme Court would deem the requested exemplar in this case as outside Fifth Amendment protections. Nevertheless, Gilbert is still controlling precedent and unless and until the Supreme Court revisits that decision, handwriting exemplars deemed non-testimonial and non-communicative are beyond Fifth Amendment reach. See United States v. Gibson, – F.3d --, 2006 WL 12894, *8 (11th Cir. Jan. 4, 2006) ("we are not at liberty to disregard binding case law that is so closely on point and has been only weakened, rather than directly overruled, by the Supreme Court") (quoting Fla. League of Prof. Lobbyists, Inc. v. Meggs, 87 F.3d 457, 462 (11th Cir. 1996)).

B. Fourth Amendment

Petitioner also contends that the Fourth Amendment's protection from unreasonable searches and seizures protects him from having to provide a handwriting exemplar because he has a reasonable expectation of privacy in his handwriting. Specifically, petitioner states that handwriting "discloses the intimate thought processes of a person" and that he has attempted to make his signature private and free from "public incursion." (Doc. S-15, pp. 34-35). The government believes precedent establishes that the Fourth Amendment affords no protection to petitioner.

A subpoena to appear before a grand jury is not a "seizure" within the meaning of the Fourth Amendment, United States v. Dionisio, 410 U.S. 1, 9 (1973), and the Fourth Amendment is not violated when a grand jury directs the subject of an investigation to provide a handwriting exemplar. United States v. Mara, 410 U.S. 19, 21-22 (1973). Here, the Court is not persuaded that, because petitioner has some celebrity status and attempts to ensure his signature is not in the public domain, this distinguishes his handwriting and gives it Fourth Amendment protection.

C. Reasonableness of the Grand Jury Subpoena

Petitioner, relying on In Re Grand Jury Proceedings (Schofield), 486 F.2d 85, 92 (3d Cir. 1973), further contests the grand jury subpoena claiming that the government has failed to make the necessary showing via affidavit that the exemplar is relevant to this grand jury's investigation. The law, however, presumes, absent a showing to the contrary, that a grand jury acts within its legitimate scope of authority. United States v. R. Enterprises, Inc., 498 U.S. 292, 300-01 (1991). The burden of showing unreasonableness of a grand jury subpoena is on the recipient who seeks to avoid compliance. Id. at 301.

Here, the Court finds that petitioner has failed to show that the grand jury subpoena is unreasonable or irrelevant to the underlying investigation. During the February 2, 2006 hearing, it became readily apparent that petitioner is well informed as to the nature of the grand jury investigation. Due to the potential criminal tax charges at issue, petitioner has been afforded a conference with the Internal Revenue Service ("IRS") to discuss the potential charges. While the Department of Justice is not bound by the charging recommendation of the IRS, petitioner understands that,

regardless of the statute ultimately charged, if any, the investigation concerns allegations of tax related fraud. The government states in its memorandum opposing petitioner's motion to quash that it is commonplace in criminal tax fraud investigations for a grand jury to seek handwriting exemplars as evidence of whether an individual signed certain existing documents. Thus, even assuming *arguendo* that the government is required to make a preliminary showing of relevance, which the Supreme Court does not seem to require, it has done so.

D. The Exemplar

Having concluded that petitioner must give a handwriting exemplar, the Court turns to the scope of that exemplar. Of course, the government may not, in the guise of a handwriting exemplar, compel petitioner to provide information which would otherwise be protected by the Fifth Amendment. During the February 2, 2006 hearing, the government provided the Court with a copy of the proposed handwriting exemplar. The exemplar is an official Department of the Treasury Internal Revenue Service Form 6540; the exemplar also includes a Form 1040X and ten copies of the first page of that form.[2] While the government refers to the exemplar as "routine," that reference is unavailing as "routine" government practices do not necessarily equate to constitutionality.

The exemplar requires petitioner to write his name, address, social security number, birthplace, birth date, age,

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[2] A copy of the proposed exemplar is attached to this Order as Exhibit "A." The government represented at the February 2, 2006 hearing that it only intended petitioner to sign the various blank tax forms, rather than fill them out in their entirety.

whether he is right or left handed, his occupation, his highest educational level completed, and whether he has any conditions which affect his present writing ability. The exemplar also requires petitioner to write all upper and lower case alphabet letters, names and job titles of fictitious people, various words and phrases, dates, days of the week, dollar amounts, numbers and fictitious addresses; the exemplar includes a sample Form 1040 tax return, a W-4 and 1040X forms for petitioner to sign.

The government states that the entire content of the exemplar is necessary to provide its handwriting expert sufficient information to make a proper handwriting comparison. However, at the conclusion of the February 2, 2006 hearing, the government offered to remove the identifying information from the first page of the exemplar and stated it would not require petitioner to sign any sample tax forms (W-4, 1040 and 1040X). The government made this offer to alleviate the Court's concern that requiring petitioner to provide this information may potentially transform what is considered a physical act under Gilbert and its progeny into a testimonial and communicative exercise barred by the Fifth Amendment.

It appears there are no cases addressing whether the full scope of the Form 6540 (including the sample tax forms -- 1040, W-4 and 1040X) is permissible under the Fifth Amendment. Because the government voluntarily offered to remove the potentially offending portions, the Court need not decide this issue. While the Court stops short of making such a ruling because of the government's agreement, because this may be a case of first impression, at least with respect to this form of exemplar, the Court offers some analysis.

The salient constitutional issue is at what point providing the exemplar ceases to be a mere physical act and becomes testimonial and communicative, thus invoking Fifth Amendment protections. The parties cited no cases addressing this issue. The only case the Court was able to uncover that addressed the overbreadth of handwriting exemplars is United States v. McVeigh, 896 F.Supp. 1549 (W.D. Okla. 1995). However, McVeigh only provides that after reviewing the three exemplars sought, the Court found no basis for concluding they were unreasonable or overbroad. 896 F.Supp. at 1558. Other than that the three exemplars sought cursive handwriting, there was no discussion as to the content of the exemplars. Id. Thus, this Court is left to analyze any testimonial aspects of the subject exemplar in light of Supreme Court precedent setting forth general "testimonial" standards.

To be testimonial the communication must, "explicitly or implicitly, relate a factual assertion or disclose information." Hubbell, 530 U.S. at 37, n. 19; Pennsylvania v. Muniz, 496 U.S. 582, 589 (1990); Poe v. United States, 487 U.S. 201, 210 (1988). "Only then is a person compelled to be a 'witness' against himself." Doe, 487 U.S. at 210.

The government analogizes the first half of page one of the exemplar to routine booking questions. See Muniz, 496 U.S. at 601-02 (questions of an individual's name, address, height, weight, eye color, date of birth and age fall within the routine booking question exception to Miranda[3] and fall outside Fifth Amendment protection because they merely address biographical data necessary to complete booking and pre-trial services). However, the information sought on the

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[3] Miranda v. Arizona, 384 U.S. 436 (1966)

first half of page one is not limited to this type of information. The exemplar also seeks, *inter alia,* petitioner's social security number, birthplace, occupation, the name, address and relationship of his nearest relative, and his highest level of education completed. Applying Hubbell, Muniz and Doe, a court might potentially find that these questions on page one, or at least some of them, ask petitioner to "disclose information" about himself, perhaps removing the exemplar from the realm of a mere physical act into a testimonial exercise.

As to the replica tax forms, the government represents that petitioner would only be required to sign his name on them, rather than writing all of the typical W-4, 1040 and 1040X information. The proffered reason for having petitioner sign the sample tax forms is that it would provide a necessary basis for a handwriting comparison because petitioner would, have to sign his name in a box of similar dimensions as that appearing on the tax forms under investigation. However, as the government concedes, it certainly does not need to use replica tax forms to achieve this goal. It may well be that requiring such goes beyond a mere "physical" exemplar and asks petitioner to provide potentially incriminating "testimonial" evidence. Because of the government's concession, the Court need not decide this issue.

III. CONCLUSION

Currently, controlling Supreme Court precedent provides that neither the Fourth nor Fifth Amendment protects petitioner from being compelled to provide a non-testimonial handwriting exemplar pursuant to a grand jury subpoena. Petitioner also fails to meet his burden to show that there is no reasonable possibility that the exemplar will produce information relevant to the ongoing grand jury investigation.

Petitioner will be required to give the handwriting exemplar in its entirety, except for portions of the first half of page one seeking personal information and page eight (containing tax forms). In addition, instead of requiring petitioner to sign his name on blank tax forms, the government may obtain petitioner's signature and the date in blank signature boxes of the same dimensions as those appearing on the W-4, 1040 and 1040X forms without any other identifying information. The allowable exemplar is attached as Exhibit "B."[4]

Accordingly, it is hereby **ORDERED**:

1. Petitioner's Motion to Quash Grand Jury Subpoena (Doc. S-13) is GRANTED IN PART AND DENIED IN PART. Petitioner is ordered to appear at the Office of the United States Attorney for the Middle District of Florida, Jacksonville Division, located on the eighth floor of the United States Courthouse, 300 North Hogan Street, Jacksonville, Florida 32202, on **March 1, 2006, at 10:00 a.m.**, to perform the handwriting exemplar consistent with this Order. Because the performance of the handwriting exemplar will not occur before the grand jury, but rather inside the United States Attorneys' Office, petitioner may be accompanied by one of his counsel, but counsel may not interfere with the giving of the exemplar consistent with this

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[4] Exhibit "B" does not include replicas of the signature boxes contained in the 1040, W-4 and 1040X forms. While the government is permitted to have petitioner sign his name and date in signature boxes that meet the dimensions of those in the W-4, 1040 and 1040X forms, the boxes must appear on the otherwise blank sheets of paper (though provisions can be made for a witness to petitioner's signature to sign as well.) The government must create these replica signature boxes if it desires petitioner to sign them.

Order.[5] The United States and petitioner are at liberty to mutually agree to another time and place for petitioner to perform the exemplar as long as it occurs on or before the March 1, 2006 deadline set forth above.

2. Petitioner's Motion for Leave to File an Over Length Brief (Doc. S-14) is GRANTED. Petitioner's Points and Authorities in Support of Motion to Quash Grand Jury Subpoena (Doc. S-15) is deemed filed and has been considered by the Court. (Doc. S-15).

3. The United States' *In Camera* Motion for an Order to Show Cause Why Witness Should not be Held in Contempt of Court (Doc. S-5) is DEFERRED. If petitioner fails to appear and give the exemplar as ordered herein, the Court orders him to appear at the United States Courthouse referenced above in Courtroom 10B on **March 6, 2006, at 3:45 p.m.**, to show cause why he should not be held in civil contempt. The government should file an in camera notice on Match 2, 2006, with service to petitioner's counsel, stating whether petitioner has complied or whether the show cause hearing must go forward.

DONE AND ORDERED at Jacksonville, Florida this 15th day of February, 2006.

/s/
TIMOTHY J. CORRIGAN
United States District Judge

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[5] Because the return of the subpoena is in the United States Attorney's Office and not before the grand jury, the Court does not believe that Rule 6(d)(1), Federal Rules of Criminal Procedure, which limits the individuals allowed inside the grand jury session, applies.

EXHIBIT A

Handwriting/Hand printing Exemplar

TO BE COMPLETED BY SUBJECT (not witness)

Name	Social Security Number
Address	Birthplace
	Birthdate
Name, Address and Relationship of Nearest Relative	Your Age
	Right handed or Left handed Writer
Employer and Employer's Address	Your Occupation
	Highest Education Completed

Do you have any condition(s) which may affect your present writing ability? Yes ___ No ___

If yes, explain:

The CAPITAL letters of the Alphabet

___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___
___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___
___ ___ ___ ___

The lower case letters of the Alphabet

— — — — — — — — — — —
— — — — — — — — — — —
— — — —

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Arthur Thomas Rosenburg,
Doctor _____

Annabelle Ursula Smith,
Nurse _____

Bryan Douglas Robinson,
President _____

Betsy Lynn Sheaffer,
Stepdaughter _____

Charles J. Miller Johnson,
Creditor _____

Connie Patricia Roman,
Assistant Manager _____

Douglas Nathan
MacHartbrough, Jr. _____

Debbie Teresa Johnston,
Secretary _____

Edward Lewis Cook
Pierce, Son _____

Elizabeth Kathlyn Enjoli
Rega, C.P.A. _____

Latonya Francis Xavier, Esquire _____

Jacqueline Kelly Thompson, Manager _____

Gregory Niles Brown Rodgers, Dentist _____

Horatio Alexander Ibsen, Doctor _____

Isadore Jenkins Xerxes, Supervisor _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Kyle Mitchell O'Dell,
Computer Asst. _____

Nathaniel Palmer Jones
Williams, V.P. _____

Quincy Rufus Jones
O'Donald, Grantor _____

Reginald Harrison
Richardson, Sr. _____

Stephen Vincent
Brockington, Esq. _____

Timothy Kenneth Ziegler,
Ph.D. _____

Stanley George Kominski,
Plumber _____

Valarie Maria Townsend,
Dentist _____

Wallace Harry Ridgley,
Secretary _____

Zackery Samuel Goldbert,
C.P.A. _____

Martin James Oliver
Pinkman, O.D. _____

Boris Hugo Quirke,
Accountant _____

Renaldo Garcia Gonzalez,
Salesman _____

Yvette Davis Anthony
Caruso, Trustee _____

Webster Lawrence
Underhill, President _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Paid Cash _____

Rec'd Loan _____

Approximate _____

Statements _____

Balance _____

Withdrawal _____

Interest Expense _____

Secured Loan _____

Office Supplies _____

For Deposit Only _____

Bank Deposit _____

Paid in Full _____

Internal Revenue
Service Center _____

A tour through our national parks would be enjoyable to you, I know. We left Los Angeles at 7:45 a.m., September 20th, via Valley Boulevard, and motored to the Grand Canyon in Arizona. From there we drove to Zion National Park in Utah. Next, a jump to Yellowstone. Then we drove up the coast, into California, and through the Redwood Forest to San Francisco, the commercial hub, arriving at 9:30 p.m., October 21st. Here, Mr. and Mrs. John X. Dix of 685 East Queen Street, Topeka, Kansas joined us. Overall, I found the roads good, and some quite equal to the best.

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

January 5, 1999 _____

February 3, 2002 _____

March 14, 1998 _____

September 17, 2001 _____

May 27, 1997 _____

November 6, 2000 _____

July 25, 1996 _____

August 31, 2001 _____

April 4, 2003 _____

October 8, 2002 _____

June 16, 2000 _____

December 5, 1998 _____

Monday _____

Tuesday _____

Wednesday _____

Thursday _____

Friday _____

Saturday _____

Sunday _____

Mon. _____

Tues. _____

Wed. _____

Thurs. _____

Fri. _____

Sat. _____

Sun. _____

In numeric form, write the following amounts:

$8386 _____

$5124 and 76/100 _____

$714.00 _____

$3,964 and 26/XX _____

$15,000.00 _____

$2,678 and 91/100 _____

$76289.00 _____

$36,489 & xx/100 _____

$4685 _____

$42,375 and 00/00 _____

$12345.67 _____

$2,747 & 65/100 _____

$72,964.36 _____

$51,333 and XX/00 _____

$100000.00 _____

$596,899 & no/100 _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Write/print the following words and numbers:

One _____ Two _____

Three _____ Four _____

Five _____ Six _____

Seven _____ Eight _____

Nine _____ Ten _____

Eleven _____

Twelve _____

Thirteen _____

Fourteen _____

Fifteen _____

Sixteen _____

Seventeen _____

Eighteen _____

Nineteen _____

Twenty _____

Twenty four _____

Twenty Two _____

Thirty three _____

Thirty Five _____

Forty six _____

Forty Eight _____

Fifty two _____

Fifty One _____

Sixty one _____

Sixty Three _____

Seventy five _____

Seventy _____

Eighty three _____

Eighty four _____

Ninety six _____

Ninety Nine _____

One hundred _____

Two Hundred _____

Eleven thousand _____

Three million _____

Six hundred forty
seven thousand _____

Seven hundred ninety
two thousand _____

Fifty Eight Thousand
Dollars _____

One hundred
thousand dollars _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

100% Financial Security Service
2001 South Kentwood Boulevard
Kansas City, Missouri 64999-0102

North Heights Day Care Center
1976 Highland Corporate Avenue
Holtsville, New York 11742-0002

Vasquez McKinney, President
8348 Michael Brookhaven Court
Fresno, California 93888

Main Drive Property Loans
7658 East Campbell Street
Memphis, Tennessee 37501
SterlingWest@daughter.mail.com

Felicia Annette Rodriguez
2244 Bradley Field Parkway
Philadelphia, Pennsylvania 19255

Husband & Wife Catering Service
54th & 3rd at Southfield Square
Cincinnati, Ohio 45999

Dollar Bills Savings + Loan
5529 Ogden Andover Lane
Atlanta, GA 39901

Nick Burkett, Sales Assistant
7589 Medical Place Suite #432
C/O Post Office Box 1693
Austin, Texas 73301

Signature	Witness's Signature
Date	Date and Time

FOLD OUT EXHIBIT

Handwriting/Hand printing Exemplar – Continued

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

► See separate instructions.

OMB No. 1545-0091

This return is for calendar year ► 19 , OR fiscal year ended ► , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

A If the name or address shown above is different from that shown on the original return, check here . . . . . ► ☐

B Has the original return been changed or audited by the IRS or have you been notified that it will be? . . ☐ Yes ☐ No

C Filing status. Be sure to complete this line. Note: *You cannot change from joint to separate returns after the due date.*

On original return ► ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ► ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—Increase or (Decrease)—explain in Part II	C. Correct amount
1 Adjusted gross income (see instructions)	1			
2 Itemized deductions or standard deduction	2			
3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability				
6 Tax (see instructions). Method used in col. C	6			
7 Credits (see instructions)	7			
8 Subtract line 7 from line 6. Enter the result but not less than zero	8			
9 Other taxes (see instructions)	9			
10 Total tax. Add lines 8 and 9	10			
Payments				
11 Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see instructions	11			
12 Estimated tax payments, including amount applied from prior year's return	12			
13 Earned income credit	13			
14 Credits from Form 4136 or Form 2439	14			
15 Amount paid with Form 4868, 2688, or 2350 (applications for extension of time to file)	15			
16 Amount of tax paid with original return plus additional tax paid after it was filed	16			
17 Total payments. Add lines 11 through 16 in column C	17			
Refund or Amount You Owe				
18 Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18			
19 Subtract line 18 from line 17 (see instructions)	19			
20 **AMOUNT YOU OWE.** If line 10, column C, is more than line 19, enter the difference and see instructions	20			
21 If line 10, column C, is less than line 19, enter the difference	21			
22 Amount of line 21 you want **REFUNDED TO YOU**	22			
23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX** 23				

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

► Your signature Date

► Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature ► Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address ► EIN ZIP code

Cat. No. 11360L

Form **1040X** (Rev. 11-97)

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

A If the name or address shown above is different from that shown on the original return, check here . . . . . ▶ ☐

B Has the original return been changed or audited by the IRS or have you been notified that it will be? . . ☐ Yes ☐ No

C Filing status. Be sure to complete this line. **Note:** *You cannot change from joint to separate returns after the due date.*

On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—increase or (decrease)—explain in Part II	C. Correct amount
1 Adjusted gross income (see instructions)	1			
2 Itemized deductions or standard deduction	2			
3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability				
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23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX**	23			

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Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address EIN ZIP code

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

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On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—Increase or (Decrease)—explain in Part II	C. Correct amount
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▶ Your signature Date

▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address EIN ZIP code

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

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On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

		A. Original amount or as previously adjusted (see instructions)	B. Net change—Increase or (Decrease)—explain in Part II	C. Correct amount
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5 Taxable income. Subtract line 4 from line 3	5			
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Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address ▶ EIN ZIP code

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

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On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

			A. Original amount or as previously adjusted (see instructions)	B. Net change—increase or (decrease)—explain in Part II	C. Correct amount
Income and Deductions (see instructions)					
	1 Adjusted gross income (see instructions)	1			
	2 Itemized deductions or standard deduction	2			
	3 Subtract line 2 from line 1	3			
	4 Exemptions. If changing, fill in Parts I and II on back	4			
	5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability	6 Tax (see instructions). Method used in col. C	6			
	7 Credits (see instructions)	7			
	8 Subtract line 7 from line 6. Enter the result but not less than zero	8			
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Sign Here Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address ▶ EIN ZIP code

Cat. No. 11360L Form **1040X** (Rev. 11-97)

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

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C Filing status. Be sure to complete this line. Note: *You cannot change from joint to separate returns after the due date.*

On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

		A. Original amount or as previously adjusted (see instructions)	B. Net change—Increase or (Decrease)—explain in Part II	C. Correct amount
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Sign Here

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▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address EIN ZIP code

Cat. No. 11360I

Form **1040X** (Rev. 11-97)

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

► See separate instructions.

OMB No. 1545-0091

This return is for calendar year ► 19 , OR fiscal year ended ► , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

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On original return ► ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

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* If the qualifying person is a child but not your dependent, see instructions.

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Your signature Date

Spouse's signature. If a joint return, BOTH must sign Date

Paid Preparer's Use Only

Preparer's signature Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours, if self-employed) and address EIN ZIP code

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions		For Paperwork Reduction Act Notice, see page 4.

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On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

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3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability 6 Tax (see instructions). Method used in col. C	6			
7 Credits (see instructions)	7			
8 Subtract line 7 from line 6. Enter the result but not less than zero	8			
9 Other taxes (see instructions)	9			
10 Total tax. Add lines 8 and 9	10			
Payments 11 Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see instructions	11			
12 Estimated tax payments, including amount applied from prior year's return	12			
13 Earned income credit	13			
14 Credits from Form 4136 or Form 2439	14			
15 Amount paid with Form 4868, 2688, or 2350 (applications for extension of time to file)	15			
16 Amount of tax paid with original return plus additional tax paid after it was filed	16			
17 Total payments. Add lines 11 through 16 in column C	17			

Refund or Amount You Owe

18 Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18	
19 Subtract line 18 from line 17 (see instructions)	19	
20 **AMOUNT YOU OWE.** If line 10, column C, is more than line 19, enter the difference and see instructions	20	
21 If line 10, column C, is less than line 19, enter the difference	21	
22 Amount of line 21 you want **REFUNDED TO YOU**	22	
23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX** 23		

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign Date

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ☐	Preparer's social security no.
Firm's name (or yours if self-employed) and address ▶			EIN
			ZIP code

Form **1040X** (Rev. November 1997)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

► See separate instructions.

OMB No. 1545-0091

This return is for calendar year ► 19 , OR fiscal year ended ► , 19 .

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

A If the name or address shown above is different from that shown on the original return, check here . . . . . ► ☐

B Has the original return been changed or audited by the IRS or have you been notified that it will be? . . ☐ Yes ☐ No

C Filing status. Be sure to complete this line. Note: *You cannot change from joint to separate returns after the due date.*

On original return ► ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ► ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—increase or (decrease)—explain in Part II	C. Correct amount
1 Adjusted gross income (see instructions)	1			
2 Itemized deductions or standard deduction	2			
3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability				
6 Tax (see instructions). Method used in col. C	6			
7 Credits (see instructions)	7			
8 Subtract line 7 from line 6. Enter the result but not less than zero	8			
9 Other taxes (see instructions)	9			
10 Total tax. Add lines 8 and 9	10			
Payments				
11 Federal income tax withheld and excess social security and RRTA tax withheld. If changing, see instructions	11			
12 Estimated tax payments, including amount applied from prior year's return	12			
13 Earned income credit	13			
14 Credits from Form 4136 or Form 2439	14			
15 Amount paid with Form 4868, 2688, or 2350 (applications for extension of time to file)	15			
16 Amount of tax paid with original return plus additional tax paid after it was filed	16			
17 Total payments. Add lines 11 through 16 in column C	17			
Refund or Amount You Owe				
18 Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18			
19 Subtract line 18 from line 17 (see instructions)	19			
20 **AMOUNT YOU OWE.** If line 10, column C, is more than line 19, enter the difference and see instructions	20			
21 If line 10, column C, is less than line 19, enter the difference	21			
22 Amount of line 21 you want **REFUNDED TO YOU**	22			
23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX**	23			

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, the amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

► Your signature Date ► Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature ► Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address ► EIN ZIP code

Form **1040X** (Rev. November 1991)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions		For Paperwork Reduction Act Notice, see page 4.

A If the name or address shown above is different from that shown on the original return, check here . . . . . ▶ ☐

B Has the original return been changed or audited by the IRS or have you been notified that it will be? . . ☐ Yes ☐ No

C Filing status. Be sure to complete this line. **Note:** *You cannot change from joint to separate returns after the due date.*

On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—increase or (decrease)—explain in Part II	C. Correct amount
1 Adjusted gross income (see instructions)	1			
2 Itemized deductions or standard deduction	2			
3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability				
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9 Other taxes (see instructions)	9			
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Refund or Amount You Owe				
18 Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18			
19 Subtract line 18 from line 17 (see instructions)	19			
20 **AMOUNT YOU OWE.** If line 10, column C, is more than line 19, enter the difference and see instructions	20			
21 If line 10, column C, is less than line 19, enter the difference	21			
22 Amount of line 21 you want **REFUNDED TO YOU**	22			
23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX**	23			

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature ▶ Date Check if self-employed ☐ Preparer's social security no.

Firm's name (or yours if self-employed) and address ▶ EIN ZIP code

Part I **Exemptions.** See Form 1040, Form 1040A, or Form 1040-T instructions.

If you are not changing your exemptions, do not complete this part.
If claiming more exemptions, complete lines 24–30 and, if applicable, line 31.
If claiming fewer exemptions, complete lines 24–29.

			A. Original number of exemptions reported or as previously adjusted	B. Net change	C. Correct number of exemptions
24	Yourself and spouse	24			
	Caution: If your parents (or someone else) can claim you as a dependent (even if they chose not to), you cannot claim an exemption for yourself.				
25	Your dependent children who lived with you	25			
26	Your dependent children who did not live with you due to divorce or separation	26			
27	Other dependents	27			
28	Total number of exemptions. Add lines 24 through 27	28			
29	Multiply the number of exemptions claimed on line 28 by the amount listed below for the tax year you are amending. Enter the result here and on line 4.	29			

Tax year	Exemption amount	But see the instructions if the amount on line 1 is over:
1997	$2,650	$100,000
1996	2,550	99,475
1995	2,500	96,025
1994	2,450	93,850

30 Dependents (children and other) not claimed on original (or adjusted) return:

(a) First name	Last name	(b) Dependent's social security number, if born in the tax year you are amending, see instructions.	(c) Dependent's relationship to you	(d) No. of months lived in your home

No. of your children on line 30 who:
- lived with you ▶ ☐
- did not live with you due to divorce or separation (see instructions) ▶ ☐

Dependents on line 30 not entered above ▶ ☐

31 For tax years before 1996, if your child listed on line 30 did not live with you but is claimed as your dependent under a pre-1985 agreement, check here ▶ ☐

Part II **Explanation of Changes to Income, Deductions, and Credits**

Enter the line number from the front of the form for each item you are changing and give the reason for each change. Attach only the supporting forms and schedules for the items changed. If you do not attach the required information, your Form 1040X may be returned. Be sure to include your name and social security number on any attachments.

If the change relates to a net operating loss carryback or a general business credit carryback, attach the schedule or form that shows the year in which the loss or credit occurred. See instructions. Also, check here ▶ ☐

Part III **Presidential Election Campaign Fund.** Checking below will not increase your tax or reduce your refund.

If you did not previously want to have $3 go to the fund but now want to, check here ▶ ☐
If a joint return and your spouse did not previously want to have $3 go to the fund but now wants to, check here ▶ ☐

Form **1040X** (Rev. November 1991)

Department of the Treasury—Internal Revenue Service

Amended U.S. Individual Income Tax Return

▶ See separate instructions.

OMB No. 1545-0091

This return is for calendar year ▶ 19 , OR fiscal year ended ▶ , 19

Please print or type

Your first name and initial	Last name	Your social security number
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (no. and street) or P.O. box if mail is not delivered to your home	Apt. no.	Telephone number (optional) ( )
City, town or post office, state, and ZIP code. If you have a foreign address, see instructions.		For Paperwork Reduction Act Notice, see page 4.

A If the name or address shown above is different from that shown on the original return, check here . . . . . ▶ ☐

B Has the original return been changed or audited by the IRS or have you been notified that it will be? . . ☐ Yes ☐ No

C Filing status. Be sure to complete this line. **Note:** *You cannot change from joint to separate returns after the due date.*

On original return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household ☐ Qualifying widow(er)

On this return ▶ ☐ Single ☐ Married filing joint return ☐ Married filing separate return ☐ Head of household* ☐ Qualifying widow(er)

* If the qualifying person is a child but not your dependent, see instructions.

USE PART II ON BACK TO EXPLAIN ANY CHANGES

Income and Deductions (see instructions)		A. Original amount or as previously adjusted (see instructions)	B. Net change—Increase or (Decrease)—explain in Part II	C. Correct amount
1 Adjusted gross income (see instructions)	1			
2 Itemized deductions or standard deduction	2			
3 Subtract line 2 from line 1	3			
4 Exemptions. If changing, fill in Parts I and II on back	4			
5 Taxable income. Subtract line 4 from line 3	5			
Tax Liability				
6 Tax (see instructions). Method used in col. C	6			
7 Credits (see instructions)	7			
8 Subtract line 7 from line 6. Enter the result but not less than zero	8			
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14 Credits from Form 4136 or Form 2439	14			
15 Amount paid with Form 4868, 2688, or 2350 (applications for extension of time to file)	15			
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Refund or Amount You Owe				
18 Overpayment, if any, as shown on original return or as previously adjusted by the IRS	18			
19 Subtract line 18 from line 17 (see instructions)	19			
20 **AMOUNT YOU OWE.** If line 10, column C is more than line 19, enter the difference and see instructions ▶	20			
21 If line 10, column C is less than line 19, enter the difference	21			
22 Amount of line 21 you want **REFUNDED TO YOU**	22			
23 Amount of line 21 you want **APPLIED TO YOUR 19 ESTIMATED TAX** | 23 |				

Sign Here

Keep a copy of this return for your records.

Under penalties of perjury, I declare that I have filed an original return and that I have examined this amended return, including accompanying schedules and statements, and to the best of my knowledge and belief, this amended return is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

▶ Your signature Date ▶ Spouse's signature. If a joint return, BOTH must sign. Date

Paid Preparer's Use Only

Preparer's signature | Date | Check if self-employed ☐ | Preparer's social security no.

Firm's name (or yours if self-employed) and address | EIN | ZIP code

Handwriting/Hand printing Exemplar -- Continued

Handwriting/Hand printing Exemplar – Continued

Date _____ Check No. _____

Pay To _____ $ _____

_____ Dollars

For _____ Signature _____

Form **W-4** Department of the Treasury Internal Revenue Service

Employee's Withholding Allowance Certificate

▶ **For Privacy Act and Paperwork Reduction Act Notice, see reverse.**

1 Type or print your first name and middle initial Last Name | 2 Your social security number

Home address (number and street or rural route)

City or town, state, and Zip code

3 Marital Status { ☐ Single ☐ Married ☐ Married, but withhold at a higher Single rate

Note: *If married, but legally separated, or spouse is a nonresident alien, check the Single box*

Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate or, if claiming exemption from withholding that I am entitled to claim the exempt status.

Employee's signature ▶ **Date ▶** , 200

8 Employer's name and address (Employer: Complete 8, 9, and 10 only if sending to IRS) | 9 Office code | 10 Employer identification number

Form **1040** Department of the Treasury – Internal Revenue Service

U.S. Individual Income Tax Return

For the year Jan.-Dec. 31, 200 , or other tax year beginning , 200 , ending , 20 | OMB No. 1545-0074

Label

Your first name and initial	Last Name	Your social security number
If a joint return, spouse's first name and initial	Last Name	Spouse's social security number
Use IRS label, otherwise Please print or type. Present home address (number and street or rural route)		Apartment Number
City, town or post office, state, and ZIP code		

Dependents: (1) First name Last name	Dependent's Soc. Sec. Number	Dependent's Relationship to You

Signature	Witness's Signature
Date	Date and Time

Form 8540 (Rev. 11-2001) Page 8 Cat. #43431R Department of the Treasury - Internal Revenue Service

EXHIBIT B

Handwriting/Hand printing Exemplar

TO BE COMPLETED BY SUBJECT (not witness)

Name

_____

Right handed or Left handed Writer

Do you have any condition(s) which may affect your present writing ability? Yes ___ No ___

If yes, explain:

The CAPITAL letters of the Alphabet

___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___

___ ___ ___ ___ ___ ___ ___ ___ ___ ___ ___

___ ___ ___ ___

The lower case letters of the Alphabet

— — — — — — — — — — —
— — — — — — — — — — —
— — — —

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar - Continued

Arthur Thomas Rosenburg,
Doctor _____

Annabelle Ursula Smith,
Nurse _____

Bryan Douglas Robinson,
President _____

Betsy Lynn Sheaffer,
Stepdaughter _____

Charles J. Miller Johnson,
Creditor _____

Connie Patricia Roman,
Assistant Manager _____

Douglas Nathan
MacHartbrough, Jr. _____

Debbie Teresa Johnston,
Secretary _____

Edward Lewis Cook
Pierce, Son _____

Elizabeth Kathlyn Enjoli
Regan, C.P.A. _____

Latonya Francis Xavier, Esquire _____

Jacqueline Kelly Thompson, Manager _____

Gregory Niles Brown Rodgers, Dentist _____

Horatio Alexander Ibsen, Doctor _____

Isadore Jenkins Xerxes, Supervisor _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Kyle Mitchell O'Dell,
Computer Asst. _____

Nathaniel Palmer Jones
Williams, V.P. _____

Quincy Rufus Jones
O'Donald, Grantor _____

Reginald Harrison
Richardson, Sr. _____

Stephen Vincent
Brockington, Esq. _____

Timothy Kenneth Ziegler,
Ph.D. _____

Stanley George Kominski,
Plumber _____

Valarie Maria Townsend,
Dentist _____

Wallace Harry Ridgley,
Secretary _____

Zackery Samuel Goldbert,
C.P.A. _____

Martin James Oliver Pinkman, O.D. _____

Boris Hugo Quirke, Accountant _____

Renaldo Garcia Gonzalez, Salesman _____

Yvette Davis Anthony Caruso, Trustee _____

Webster Lawrence Underhill, President _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Paid Cash _____

Rec'd Loan _____

Approximate _____

Statements _____

Balance _____

Withdrawal _____

Interest Expense _____

Secured Loan _____

Office Supplies _____

For Deposit Only _____

Bank Deposit _____

Paid in Full _____

Internal Revenue
Service Center _____

A tour through our national parks would be enjoyable to you, I know. We left Los Angeles at 7:45 a.m., September 20th, via Valley Boulevard, and motored to the Grand Canyon in Arizona. From there we drove to Zion National Park in Utah. Next, a jump to Yellowstone. Then we drove up the coast, into California, and through the Redwood Forest to San Francisco, the commercial hub, arriving at 9:30 p.m., October 21st. Here, Mr. and Mrs. John X. Dix of 685 East Queen Street, Topeka, Kansas joined us. Overall, I found the roads good, and some quite equal to the best.

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

January 5, 1999 _____

February 3, 2002 _____

March 14, 1998 _____

September 17, 2001 _____

May 27, 1997 _____

November 6, 2000 _____

July 25, 1996 _____

August 31, 2001 _____

April 4, 2003 _____

October 8, 2002 _____

June 16, 2000 _____

December 5, 1998 _____

Monday _____

Tuesday _____

Wednesday _____

Thursday _____

Friday _____

Saturday _____

Sunday _____

Mon. _____

Tues. _____

Wed. _____

Thurs. _____

Fri. _____

Sat. _____

Sun. _____

In numeric form, write the following amounts:

$8386 _____

$5124 and 76/100 _____

$714.00 _____

$3,964 and 26/XX _____

$15,000.00 _____

$2,678 and 91/100 _____

$76289.00 _____

$36,489 & xx/100 _____

$4685 _____

$42,375 and 00/00 _____

$12345.67 _____

$2,747 & 65/100 _____

$72,964.36 _____

$51,333 and XX/00 _____

$100000.00 _____

$596,899 & no/100 _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

Write/print the following words and numbers:

One _____ Two _____

Three _____ Four _____

Five _____ Six _____

Seven _____ Eight _____

Nine _____ Ten _____

Eleven _____

Twelve _____

Thirteen _____

Fourteen _____

Fifteen _____

Sixteen _____

Seventeen _____

Eighteen _____

Nineteen _____

Twenty _____

Twenty four _____

Twenty Two _____

Thirty three _____

Thirty Five _____

Forty six _____

Forty Eight _____

Fifty two _____

Fifty One _____

Sixty one _____

Sixty Three _____

Seventy five _____

Seventy _____

Eighty three _____

Eighty four _____

Ninety six _____

Ninety Nine _____

One hundred _____

Two Hundred _____

Eleven thousand _____

Three million _____

Six hundred forty
seven thousand _____

Seven hundred ninety
two thousand _____

Fifty Eight Thousand
Dollars _____

One hundred
thousand dollars _____

Signature	Witness's Signature
Date	Date and Time

Handwriting/Hand printing Exemplar – Continued

100% Financial Security Service
2001 South Kentwood Boulevard
Kansas City, Missouri 64999-0102

North Heights Day Care Center
1976 Highland Corporate Avenue
Holtsville, New York 11742-0002

Vasquez McKinney, President
8348 Michael Brookhaven Court
Fresno, California 93888

Main Drive Property Loans
7658 East Campbell Street
Memphis, Tennessee 37501
SterlingWest@daughter.mail.com

Felicia Annette Rodriguez
2244 Bradley Field Parkway
Philadelphia, Pennsylvania 19255

Husband & Wife Catering Service
54th & 3rd at Southfield Square
Cincinnati, Ohio 45999

Dollar Bills Savings + Loan
5529 Ogden Andover Lane
Atlanta, GA 39901

Nick Burkett, Sales Assistant
7589 Medical Place Suite #432
C/O Post Office Box 1693
Austin, Texas 73301

Signature	Witness's Signature
Date	Date and Time

APPENDIX C

SEALED CASE
[DO NOT PUBLISH]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:06-mc-1-J-32MMH

[Filed March 7, 2006]

IN RE: GRAND JURY SUBPOENA NO. 2002R02810(163) ISSUED BY GRAND JURY NO. 2005-01 to XXXXX XXXXX XXXXX,	)
Appellant.	)

IN CAMERA ORDER

At the March 6, 2006 hearing on the United Stales' *In Camera* Motion for an Order to Show Cause Why Witness Should Not be Held in Contempt of Court (Doc. S-5), the Court, upon proper notice and with all affected parties, including petitioner XXXXX XXXXX XXXXX, present, adjudicated petitioner in civil contempt, pursuant to 28 U.S.C. § 1826(a), for his failure to comply with the Court's February 15, 2006 Order (S-18) requiring him to provide a

handwriting exemplar. The Court ordered petitioner's immediate confinement but then set conditions of release pursuant to 28 U.S.C. § 1826(b). The court's findings of fact and conclusions of law are attached and incorporated herein by this reference. It is hereby **ORDERED:**

1. Petitioner XXXXX XXXXX XXXXX is adjudicated in civil contempt pursuant to 28 U.S.C. § 1826(a) for his failure to provide the handwriting exemplar as required by the Court's February 15, 2006 Order (Doc. S-18).

2. The conditions of petitioner's release are set forth in the *In Camera* Order Setting Conditions of Release (Doc. S-23) and the Secured Appearance Bond (Doc. S-24).

3. Petitioner must forthwith file a notice of appeal to expedite appellate review of this Order and the February 15, 2006 Order, pursuant to 28 U.S.C. § 1826(b).

DONE AND ORDERED at Jacksonville, Florida this 7th day of March, 2006.

/s/
TIMOTHY J. CORRIGAN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CASE NO. 3:06-mc-I-J-32MMH

IN RE:GRAND JURY SUBPOENA)
NUMBER 2002-R-02810163)

EXCERPT OF IN-CAMERA HEARING
(SEALED PROCEEDING)

BEFORE: The Honorable Timothy J. Corrigan

March 6, 2006
2:00 p.m.

PROCEEDINGS

COURT SECURITY OFFICER: All rise. This Honorable Court is now in session. Please be seated.

THE COURT: All right. I'm prepared to make my findings and rulings in the matter. To the extent required by the *Beverly* case, this recitation by the court will be the findings of fact and conclusions of law which supports the court's ruling.

This case is before the court on the United States' in-camera motion for an order to show cause why the witness, who is petitioner XXXXX XXXXX, should not be held in contempt.

The petitioner, through counsel, previously filed a motion to quash grand jury subpoena. The petitioner also responded in opposition to the United States' in-camera motion for an order to show cause. And the United States has also filed appropriate responses to the motion to quash.

On February 2nd, the court heard in-camera arguments on both motions. And on February 15th, 2006, the court entered an order which granted in part and denied in part the petitioner's motion to quash.

Specifically, the court, in its February 15th, 2006, order, which is S-18 in the record and which is incorporated into these findings and conclusions by reference -- specifically, the court ordered, in paragraph one -- based upon the findings and legal analysis in the February 15th order, the court found that petitioner's motion to quash grand jury subpoena, S-13, was granted in part and denied in part.

Petitioner was ordered to appear at the office of the United States Attorney for the Middle District of Florida, Jacksonville Division, on March 1st, 2006, at 10 a.m., to perform the handwriting exemplar which was the subject of the grand jury subpoena at issue in this case; that is, that the grand jury subpoena required the petitioner to give a handwriting exemplar. The court, after proper proceedings on the petitioner's motion to quash and on the government's order to show cause, determined that the petitioner should -- was, indeed, required by law to honor the grand jury subpoena and to provide a handwriting exemplar, the form of which was modified by the court's February 15th, 2006, order.

The court further ordered that -- that if the petitioner failed to provide the handwriting exemplar on March 1st,

2006, as required by the court's February 15th, 2006, order, that the petitioner appear before this court on today's date, March 6, 2006, to show cause why he should not be held in civil contempt for failing to follow the court's order which required the providing of the handwriting exemplar

The court's February 15th order further required the government to file an in-camera notice on March 2nd, 2006, stating whether petitioner had, in fact, provided the exemplar or not.

On March the 2nd, 2006, the government provided written notice to opposing counsel and to the court that the petitioner had failed to appear in Jacksonville on March 1st, 2006, to provide the ordered handwriting exemplar; therefore, the show cause hearing went forward today with due notice to all affected parties.

And, indeed, all affected parties are present here today. The petitioner is present with counsel. And the government is represented by counsel.

The governing statute, all agree, is 28, U.S.C., Section 1826, which is called recalcitrant witness statute. It provides, in substance, that whenever a witness refuses to -- without just cause, to comply with an order of the court to testify or provide other information to a grand Jury, that the court may summarily order that person's confinement at a suitable place until such time as the witness is willing to give such testimony or provide such information.

The life of that term of confinement is either the life of the court proceedings or the term of the grand jury, including any extensions. However, no term of confinement can exceed 18 months.

At the hearing -- the show cause hearing today, the government reiterated that Mr. XXXXX had failed to provide the exemplar as ordered by the court. The petitioner, through counsel, acknowledged that, upon advice of his counsel, he had, indeed, failed to comply with the court's order.

The petitioner acknowledged that the court, therefore, had no choice but to find the petitioner in civil contempt of this court based upon his failure to follow the order of the court.

And the petitioner further acknowledged on this record, through counsel, that confinement was the appropriate punishment for that failure.

The petitioner, through counsel, further stated that it -- it is petitioner's intent to appeal the contempt order to the Eleventh Circuit in order to try to convince the Eleventh Circuit that the -- that this court's order which requires the petitioner to provide the handwriting exemplar is in error.

The issue then came down to having acknowledged petitioner having acknowledged both that the court was required to find him in civil contempt and that confinement is the appropriate sanction for that contempt, with the opportunity to purge that contempt by providing the exemplar at any time.

The issue then came down to whether a stay of the court's order of confinement, the finding of contempt and order of confinement, would be appropriate pending appeal, or, alternatively, whether admitting the petitioner to bail would be appropriate while appellate proceedings occur.

The focus of the hearing, therefore, was on 18, U.S.C., Section 18 -- I'm sorry, 28, U.S.C., Section 1826(b), which

provides that no person confined pursuant to the statute shall be admitted to bail pending determination of an appeal taken by him from the order for his confinement, if it appears that the appeal is frivolous or taken for delay.

The statute further provides that any appeal from an order of *confinement* under this section shall be disposed of as soon as practicable, but not later than 30 days from the filing of such appeal.

The court invited the parties to -- to argue both legally the standard the court should apply in determining whether a stay or bail should be allowed or whether the petitioner should be confined without bail or a stay until the appeal is decided.

The court had also, previous to the hearing, reviewed as much case law as was available to the court, including cases -- these cases:

Beverly versus United States, 468 F.2d 732, Fifth Circuit 1972; *In re Grand Jury Proceedings, Kopkowski,* K-O-P-K-O-W-S-K-I, 819 F.2d 981, Eleventh Circuit 1987; *In re Grand Jury Investigation of Heller,* H-E-L-L-E-R, 921 F.2d 1184, Eleventh Circuit 1991. *In re Grand Jury Howald,* H-O-W-A-L-D, 877 F.2d 849, Eleventh Circuit 1989.

The court also reviewed from some out-of-circuit law on these issues. There's also a case *In re Grand Jury Subpoena Duces Tecum,* 955 F.2d 670, Eleventh Circuit, 1992. And some District Court authority -- one decision of Judge Marcus, in -- when he was a district judge, *In re Grand Jury Subpoena,* dated November 12th, 1991, 792 F.Supp. 1431, Southern District of Florida, 1992, and *United States versus McVeigh -- Timothy McVeigh.* And that's from Oklahoma, 896 F.Supp. 1549, the Western District of Oklahoma 1995

decision.

The court reviewed those decisions both to satisfy itself as to the nature and appropriateness of the process that the court was engaged in today and, also, to inform itself concerning the issue of stay and bail.

And there was argument of counsel which is -- will be of record concerning the appropriate standards for the court to apply, and whether or not the factual premises have been met, so that the court could admit the petitioner to bail or to issue a stay.

The court, with that recitation, makes the following findings:

The court, pursuant to 18 -- I'm sorry, 28, U.S.C., Section 1826(a), hereby and pursuant to the order to show cause, all proceedings having been properly conducted, does hereby adjudicate the petitioner, XXXXX XXXXX XXXXX, to be in civil contempt of this court for the failure of the petitioner to follow the court's order of February 15th, 2006, requiring the petitioner to provide to the government at a specified time and place the handwriting exemplar consistent with the one required in the court's order.

The court further orders and adjudges that because of the contumacious conduct of Mr. XXXXX as just found, that -- and pursuant to the lawful authority of the court pursuant to 18 -- or 28, U.S.C., Section 1826(a), the court orders that the petitioner be immediately confined and incarcerated until such time as the petitioner is willing to give the handwriting exemplar that is required by the court's order of February 15th, 2006, or until such other event under the statute, such as the expiration of the grand jury term or any other

requirement of law that would allow the petitioner to be released occurs.

The defendant's ore tenus motion for a stay of the court's order of contempt and finding of immediate incarceration, or seeking bail pending the appeal of the court's order of contempt, is granted.

The court finds that the petitioner has made the requisite showing, pursuant to Section 1826(b), that this – that the appeal that is contemplated of this order is neither frivolous nor taken for a delay.

The court further finds that even under the standards announced by the Fifth Circuit in *Beverly,* if that be the proper standard still in the Eleventh Circuit -- and I have to say there's doubt about that, given later Eleventh Circuit cases which just refer to the statute itself.

But I find that under prevailing Eleventh Circuit precedent that Mr. XXXXX is entitled to be -- to either a stay or to be admitted to bail pending an appeal of this court's order of contempt.

In the exercise of my discretion, I choose bail as the appropriate remedy for -- or appropriate forum by which Mr. XXXXX could be released while he appeals. The amount of that bail will be determined momentarily upon inquiry by the court.

The other conditions of my order that would allow Mr. XXXXX to be admitted to bail are the following, that Mr. XXXXX, during the period of the appeal, not travel outside of the United States without permission of the court; number two, that upon order of the appellate court that requires him

to do so, that the petitioner would forthwith provide the contested exemplar or, failing to do so, be subjected to immediate confinement and forfeiture of the bail amount.

And the third condition is that to effectuate the purposes of 18, U.S.C. -- I'm sorry, 28, U.S.C., Section 1826(b), I will require as a condition of admitting Mr. XXXXX to bail that he immediately and forthwith file his notice of appeal with the Eleventh Circuit of this order, that he request of the Eleventh Circuit that the appeal be expedited pursuant to the statute, and that he cooperate with any efforts of the government to have that appeal expedited, as contemplated by Section 1826(b).